UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

SEP 2 8 2001

ED-OIG/A07-B0001

Dr. Thomas F. Boyd, President
William Penn University
201 Trueblood Avenue
Oskaloosa, Iowa 52577

Dear Dr. Boyd:

This ***Final Audit Report*** (Control Number ED-OIG/A07-B0001) presents the results of our Audit of Course Length at William Penn University (the University). Our objective was to determine whether the University violated 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 undergraduate College for Working Adults (CWA) 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 CWA programs provided the required amount of instructional time as defined by the 12-Hour Rule. The CWA Student and Faculty Handbooks stated that 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. CWA student guides described the study group requirement as follows: "It is essential that study groups meet outside the required class time to discuss and prepare assignments and share learning resources." 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 CWA 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 determined that the University overawarded $950,593 in Federal Family

Education Loan Program (FFELP) funds, and $239,242 in Pell Grant funds to its CWA 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 CWA educational programs in credit hours, but did not use a semester, trimester, or quarter system. The CWA 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 determined as overawarded are duplicative of the dollars we determined as overawarded in ED-OIG/A07-90035, *William Penn University, College for Working Adult's Administration of Title IV Programs - Commissioned Sales* issued on May 15, 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 CWA student and faculty handbooks, students were required to meet for four hours per week in regular classroom workshops, and were expected to meet an additional four hours per week in study groups. 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 to check the instructor's class attendance records weekly and, if a student missed more than two classes, the student received a failing grade. The University did not have an equivalent policy for study group attendance. Faculty were not required to monitor study group attendance. The University had a form to record attendance that study group members were to complete and submit directly to the student services office for retention. This procedure bypassed the faculty member.

Our review of a non-statistical sample of seven study groups, from an estimated universe of 147 study groups,[2] found that the CWA student service files contained no documentation for 70 percent of the required number of hours of study group meetings. We found documentation that the seven study groups completed 71 courses and met for a total of 352 regular class workshops (1,408 hours). They were required to meet an additional 1,408 hours in study group meetings; however, we found no documentation for 986 of the 1,408 hours, or 70 percent. For all but three students, the files contained documentation that the students completed all of the courses and received passing grades. The three students received incomplete or failing grades for four courses and passing grades for the remaining courses.

If we present our sample results based on the group meeting attribute rather than focusing on hours, we found that only 31 of the 352 study group meetings were held for the full four hours with at least two members (constituting a study *group*) present. Our review found that only 9 percent of the required study group meetings were held for the full four hours with at least two members present.

We were informed by two Student Services Directors, at two separate locations, that documentation maintained for the seven study groups in our sample was representative of the universe of study groups. Our sample covered study groups from all three CWA program locations, and from the two award years during the scope of our audit. Based on review of the University's written policies and procedures, review of study group records, and interviews with University officials, we determined that the University did not provide adequate assurance that study groups were taking place to meet the requirements of the 12-Hour Rule.

[2] The University could not provide a list of study groups; therefore, we could not define an exact population of study groups. The University estimated that there were three study groups per cohort (15 students in a cohort divided by 5 students per study group). We arrived at an estimate of study groups by multiplying the population of cohorts (49) provided to us by the University times the estimated number of study groups per cohort (3).

Failing to Comply With the 12-Hour Rule Resulted in the University Overawarding $1,189,835 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 Stafford loan and Pell Grant programs. We determined that the University overawarded $1,189,835 of Title IV funds to CWA students. The students included in this amount had Stafford loans and Pell Grants with loan/grant periods from the first Title IV disbursement made by the University on November 27, 1996 through June 30, 1999.

- **Stafford Loan Limits.** Title 34 CFR § 682.603(d) stipulates that an institution may not certify a loan application that would result in a borrower exceeding the maximum annual loan amounts specified in 34 CFR § 682.204. We determined that $950,593 in Stafford loan disbursements exceeded the annual loan limits.

- **Pell Grant Maximum.** Title 34 CFR § 690.62(a) specifies that the amount of a student's Pell Grant for an academic year is based upon schedules published by the Secretary for each award year. The payment schedule lists the maximum amount a student could receive during a full academic year. We determined that $239,242 in Pell Grant disbursements exceeded the maximum amount allowed.

Institutions were required to comply with the 12-Hour Rule as of July 1, 1995. Because the University's academic year for its CWA programs did not meet the requirements of the 12-Hour Rule, the University has improperly disbursed Title IV funds for its undergraduate students on Stafford loan and Pell Grants awarded since the first disbursement on November 27, 1996.

Recommendations

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

1. Immediately develop an academic year for its undergraduate CWA programs that satisfies the 12-Hour Rule as a condition for continued participation in Title IV programs.

2. Return to lenders the FFELP funds disbursed that exceeded the loan limits for an academic year. We determined that the amount was $950,593 for students who had loans with beginning dates between November 27, 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 Grant funds disbursed to students that exceeded the allowable award for an academic year. We determined that the amount was $239,242 for students who had Pell Grants with grant period dates beginning between November 27, 1996 through June 30, 1999.

4. Determine the amounts of FFELP and Pell Grant funds overawarded from July 1, 1999, through the present. The amounts overawarded 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/A07-90035, *William Penn University, College for Working Adult's Administration of Title IV Programs - Commissioned Sales* issued on May 15, 2001 (discussed in *Other Matters* below). Only those amounts not recovered under ED-OIG/A07-90035 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 College for Working Adults programs satisfy the 12-Hour Rule, and the University has adequately documented its compliance.

   A. Study team meetings constitute instructional activity.
   B. Study team meetings were regularly scheduled.
   C. The University's attendance policy covered study team meetings.
   D. The University adequately monitored study team meeting attendance.
   E. Study teams are part of an integrated curriculum module, and faculty members were aware of which students did not attend the study team meetings in a given week.
   F. Additional hours spent by students in preparation for examinations is includable under the 12-Hour Rule.
   G. There is no statutory or regulatory requirement for study teams to meet at locations owned, leased or otherwise monitored by the University.

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 utilizes an erroneous methodology to determine the number of study team hours required under the 12-Hour Rule.
B. The draft audit report arbitrarily excludes documented study group meetings.
C. 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 College for Working Adults 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 CWA programs provided the requisite amount of regularly scheduled instruction, examinations or preparation for examinations required by the 12-Hour Rule. The University also stated that the OIG had established a *documentation rule* that exceeded statutory and regulatory requirements.

OIG Response

The *Report to Congress on the Distance Education Demonstration Programs* quoted by the University refers to distance education classes that allow students to move at their own pace. Students in the CWA 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 non-terms 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 instructional 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)). The regulations require the University to document its compliance with the 12-Hour Rule. 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 Team Meetings Constitute Instructional Activity

The University stated that study team meetings fall within the scope of "regularly scheduled instruction, examinations, or preparation for examinations." The study team 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 study group meetings were actually scheduled and occurred as required by the University. On August 10, 2000, the Department issued a Notice of Proposed Rulemaking (NPRM) concerning, among other items, changes to the 12-Hour Rule. In the NPRM, the Department stated, "[i]t was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program."

Study Team Meetings Were Regularly Scheduled

The University required that study teams complete a team constitution that established that particular group's weekly meeting time and location, and attendance policies for the group. Each of the seven study teams in the OIG's sample included their weekly meeting time and location in its constitution. Other factors that indicated that study teams were both regular and scheduled were: (i) weekly tasks to be completed were specified in the course module, (ii) all team members were required to participate in team 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 team assignments and projects.

OIG Response

Of the seven study group constitutions that we reviewed, four had no reference to time and location, one had the meeting day and start time only, and one had the meeting day only. For the seventh, we did not have enough information to determine if it supported the University's response. The student services director informed us that there is no official record of where the study group meets. He also stated that the location can change from week to week. We found no reliable evidence to support the University's statement that meetings were regularly scheduled for all study groups.

The University's Attendance Policy Covered Study Team Meetings

The University stated that its attendance policy relating to regular class workshops also applied to study groups. If a student missed more than two sessions of either the faculty-led class sessions or more than two study team meetings, or any combination thereof totaling more than two absences, the student received a failing grade for the course. The draft report's statement that there was no attendance policy for study teams is therefore wrong.

OIG Response

The University's response is not consistent with the attendance policy included in the faculty and student handbooks which only referred to the required four hours per week of class workshops. The written policy did not address study groups. This was confirmed by discussions with the University's student service director. He stated that the University did not have a written attendance policy for study groups. He stated that the class workshop attendance records are checked weekly and, if a student missed three class workshops he/she received a failing grade. He also commented that sometimes the students received their grades before the University received the required study team reports.

The University Adequately Monitored Study Team Meeting Attendance

The University required study team members to submit study team reports identifying the date and time of each study team meeting. The OIG apparently disregards these study team reports because they are submitted directly to the University rather than going through the individual faculty member responsible for the course. There is no statutory or regulatory basis for this distinction. Faculty presence during study team meetings is not required for the faculty member to assess whether a student adequately participated in the weekly study team meetings. The course module indicates that study team meetings are devoted to the development of group projects and preparation of presentations which are graded and comprise part of each student's final grade. 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.

The University stated in its response to our report that:

> Because the study team meetings were so central to the CWA curriculum, the Student Services Director developed systematic procedures for monitoring both the occurrence of study team meetings and individual members' attendance at those meetings. As shown in the audit workpapers, students were required to submit Study Team Reports identifying the date and time of each study team meeting.

OIG Response

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

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

It is incumbent on the University to demonstrate that it is in compliance with the 12-Hour Rule. The University's statements acknowledged the importance of the University monitoring the occurrence of study group attendance. The University established the study team reports as a control to monitor study group occurrence and attendance. In examining whether study group meetings occurred, we determined that they were not regularly scheduled. We reviewed the student and faculty handbooks, and we held discussions with University officials to obtain an understanding of the University's policies and procedures as they related to the completion of the study team reports. Contrary to the University's assertion, we did consider study team reports. As explained in the *Audit Results* section of our report, we selected a sample of seven study groups and, for these seven study groups, reviewed all available study team reports maintained by the University. Our review of these reports and discussions with University officials indicated that students were not always completing these reports as required by the University. One report that we reviewed indicated that the study group did not meet at all for two required study group meetings, and another report for a different study group indicated that it did not meet for a weekly meeting. In the absence of study team reports that reflected required attendance—the internal control selected by the University—or some other effective control, we have no basis to conclude that the University was in compliance with the 12-Hour Rule.

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

The University contends the OIG's position is that an instructor must be present at study team meetings in order for study teams 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 attend four hours per week in 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. Our review of a sample of study group records indicated that students received passing grades from faculty members even though 70 percent of the required study group hours related to the weekly meetings were not documented.

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

Some CWA courses in mathematics and business utilize traditional examinations, in addition to the study team 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 four hours per week be spent in classroom workshops and four hours per week be spent in study team 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 Notice of Proposed Rulemaking (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 CWA program had no study days scheduled in lieu of scheduled classes.

There is No Statutory or Regulatory Requirement for Study Teams to Meet at Locations Owned, Leased, or Otherwise Monitored by the University

The University stated that the draft report disallows certain study team meetings because they were not held at locations monitored by the University. The regulatory provision, and the Department's commentary accompanying the regulation, explicitly acknowledge that instructional time may include educational activity that occurs off-campus or at locations otherwise not within the University's control. The University stated that the CWA 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 CWA 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

Our audit report did not state that the study team meetings must be held at locations monitored by the University. During our review, we considered the University's monitoring of study group locations as one possible element of the University's internal control system, and we determined that this control was weak because the University was generally not aware of where study group meetings were held. University officials informed us that study teams did not participate as a group in any cooperative educational-type activities at employers within the community.

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 immeasurable burden it has created for institutions, has recently come under increased scrutiny. The Department has not yet complied with a legislative mandate to report to Congress on the 12-Hour Rule. 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, and the University acknowledged it was required to comply with it. As with any other regulation, the University must be able to document that it is in compliance. Accordingly, the University must be able to document that its academic year provided 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

The University stated that we incorrectly calculated the number of required study group hours in our review of a sample of study group records. It stated that the combination of study group and class workshop hours should have been calculated by multiplying the seven study groups in our sample by the required 360 hours of instruction in an academic year (a total of 2,520 hours). The required study group hours of 1,112 were then determined by subtracting the total class workshop hours of 1,408 from 2,520. The OIG methodology therefore requires 296 hours more than are required by the 12-Hour Rule. Because the OIG gives credit for 422 study team hours, the University has proven 1830 hours under the OIG documentation rule.

OIG Response

We determined the number of required class workshops for the seven study groups in our sample by reviewing cohort calendars and class records. The seven study groups were required to take 71 courses which consisted of a total of 352 class workshops during the audit period (we did not restrict our analysis to one academic year since students may have attended classes for more than one academic year during our audit period). In accordance with the University's study group policies, for each of the 352 weekly workshops, the study groups were required to spend another 4 hours per week in study group meetings. We correctly calculated the total number of hours each study group was required to attend study group meetings by multiplying the 352 workshops by 4 hours to arrive at a total of 1,408. For the seven study groups, we found documentation that the study groups attended a total of 422 hours in study group meetings. In our liability recommendation, we disallowed all study group time in the absence of reliable evidence that meetings occurred as required. The University's comments thus do not affect the liability recommendation.

The Draft Audit Report Arbitrarily Excludes Documented Study Group Meetings

According to the OIG workpapers, the OIG gives credit to a study team meeting only if the study team report indicates both a starting and ending time for the meeting, while ignoring other documented study team meetings simply because an ending time for the meeting is not shown on the study team report. There is no stated requirement for an institution to document each and every hour spent by a student on activities such as work, research, and special studies, so long as they are regularly scheduled.

OIG Response

We did not consider that a study group had occurred for a specific number of hours if the documentation merely showed that it was scheduled to occur at a specific day or time. The Institution had an established policy that required the completion of forms to document the number of hours attended. If the students did not complete both the starting and ending times on the forms, it was impossible to tell whether they met for any length of time, or even met at all.

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

The OIG failed to consider that instructional activity includable under the 12-Hour Rule necessarily occurs outside of both the faculty-led classes and the study team meetings. 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. Students completed "end-of-course surveys" on which they are asked how much time was spent, outside of both the class sessions and study team meetings, on the course. Most students indicated several hours of preparation for examinations or other graded projects, and such time must be counted towards the 12-Hour Rule. The OIG failed to review, or chose to ignore, the end-of-course surveys and the additional hours they represent.

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.

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 15, 2001, ED-OIG/A07-90035, *William Penn University, College for Working Adult's Administration of Title IV Programs - Commissioned Sales.*

Background

William Penn University is a comprehensive liberal arts University founded in 1873 by the Quakers. The main campus is located in Oskaloosa, Iowa. The University was fully accredited in 1960 by the North Central Association of Colleges and Secondary Schools, and is also accredited by the Iowa State Board of Education. The State Approving Unit for Veterans Education has also approved the University. In March 1996, the North Central Association of Colleges and Secondary Schools conducted a focused visit at the University and recommended approval of the College for Working Adults programs. The focused visit included a review of the contract and the relationship between the University and IPD. The cohort study group is an integral part of the IPD educational model. In 1997, the University opened its first branch campus in West Des Moines, Iowa. This campus served adult students enrolled in the CWA. The CWA also served students in Oskaloosa and Ames, Iowa. An additional focused visit was conducted by the accrediting agency in March 1999. At that time, it recommended approval of up to three new CWA sites per year in Iowa and Nebraska, and approval of the Associate of Arts in Leadership Studies degree under the CWA.

During the scope of our review, the University offered two CWA programs at its three locations—the Bachelor of Arts in Business (BAB) and Gateway studies. A total of 124 semester hours were required for the BAB degree. No student may be admitted into the BAB program with fewer than 50 credits of University work. Gateway studies were designed to allow students to fulfill general education requirements and to advance to the BAB program. Each program was designed for working adults and was structured using the same cohort-based format. A cohort of 12 to 15 students met one night per week for 4 hours of classroom instruction. In addition, study groups of 3 to 6 students were required to meet 4 more hours per week without an instructor present. Group discussion was designated as the dominant mode of instruction within the class. The cohort group follows a "lock-step" set of courses (generally a course was 5 weeks in length), with students taking one course at a time,

designed to complete the requirements for the BAB degree in 18-20 months. There were no electives and students were required to complete each module to advance with the group to the next; however, students in the BAB program were allowed to "drop in" to the Gateway program to fulfill specific general education needs.

As of July 1999, approximately 500 students were enrolled in the CWA, and total enrollment at all William Penn University locations and programs was over 1,100 students. Overall student enrollment at William Penn University has increased significantly in recent years, 40 percent in academic year 1997-98, and 39 percent in academic year 1998-99.

Students enrolled in CWA programs received assistance under the FFEL, Pell Grant, and PLUS loan programs. The U.S. Department of Education reported a 12.8 percent default rate for William Penn University for fiscal year 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 policies and procedures, accounting and bank records, and student financial assistance and academic files for the CWA programs. We reviewed the University's contract with IPD. We reviewed the most recent Office of Management and Budget (OMB) Circular A-133 audit reports prepared by the University's Certified Public Accountants, and the November 1993 program review report prepared by the U.S. Department of Education's Student Financial Assistance. We also reviewed the two most recent reports on the CWA prepared by the University's accrediting agency. We reviewed seven non-statistically selected study group files from an estimated universe of 147 study groups that started during the audit period. We interviewed University and IPD management officials and staff.

We relied extensively on computer-processed data extracted by the University from its database of Title IV academic records and on computer-processed data extracted by IPD from its database of Title IV student payment data. We used an extract of payment and award data from the National Student Loan Data System (NSLDS) to corroborate information obtained from the University's and IPD's systems. We held discussions with University officials to gain an understanding of the automated process used for determining the number of credit hours that the student was expected to complete for the loan period. We tested the accuracy, authenticity, and completeness of the data by comparing source records to computer data, and comparing computer data to source records. Based on these tests and assessments, we concluded that data were sufficiently reliable to be used in meeting the audit's objectives.

The audit covered the 1997-98 and 1998-99 award years (July 1, 1997 through June 30, 1999). In addition, we reviewed disbursements under the University's CWA programs from the first disbursement on November 27, 1996 through June 30, 1999. We performed fieldwork on-site at the University's offices in West Des Moines and Oskaloosa, Iowa, during the periods August 2-4, 1999, March 6-10, 2000, and April 17-20, 2000. We held an exit

conference with the University on July 27, 2000. 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 provided electronic files containing information on CWA students who received disbursements for PLUS, Stafford loan, and/or Pell Grants with loan/grant periods beginning with the inception of the CWA programs through June 30, 1999. We used the information contained in these files and corroborating information extracted from NSLDS to determine the improperly disbursed funds. As there is no annual loan limit for PLUS loans, we did not include them in our analysis.

The University's academic year for its CWA programs would need to be 90 weeks in length in order for it to meet the 360-hour requirement for an academic year. Therefore, the University should not have disbursed Title IV funds to students during a 90-week academic period that exceeded the maximum amounts allowable for an academic year.

FFELP Disbursements Made in Excess of the Amounts Allowable for an Academic Year. For all students who received FFELP funds during the period November 27, 1996 through June 30, 1999, we determined the actual aid awarded and disbursed. Based on our observations and reliability assessment of the data, we determined that the loan amounts on the award records were not always the actual amounts disbursed. As a result, we performed a number of procedures to determine the actual amounts. For any amounts determined to be different than the award data, we manually changed the amounts in the database. We determined the number of eligible disbursements based on the number of weeks completed and whether the next payment period had begun. Students were eligible for disbursements based on the 90-week borrower based academic year and the 12-month loan period, and the number of completed or planned instructional weeks. We determined the eligible FFELP loan disbursements based on our determination of the initial grade level, and loan limits as set forth in 34 CFR § 682.204. We identified $950,593 in disbursements that exceeded the annual limits.

Pell Grant Disbursements Made in Excess of Amounts Allowable for an Academic Year. For all students who received Pell Grant funds during the period November 27, 1996 through June 30, 1999, we determined the actual aid awarded and disbursed. Pell Grants were awarded using schedules published annually by the Secretary of Education. We determined the number of eligible disbursements based on the number of weeks completed and whether the next payment period had begun. Students were eligible for disbursements based on the 90-week borrower based academic year and the 45-week instructional hour payment periods, and the number of completed or planned instructional weeks. Each Pell disbursement was evaluated for allowability based on the student's eligibility for a payment in that award year. If a student's first payment period would not be until 1999-2000 because more than six months would be in that award year, then no Pell was allowed for award year 1998-99. We identified $239,242 in Pell Grant disbursements that exceeded the maximum amount allowed for a 90-week academic year.

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 for the CWA and applicable to the scope of the audit. Our purpose was to assess the level of control risk for determining the nature, extent, and timing of our substantive tests. We assessed the significant controls in the following categories:

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

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, our assessment disclosed significant management control weaknesses which adversely affected William Penn University, College of Working Adult's ability to administer the Title IV programs. These weaknesses include inadequate control over the amount of time spent in instruction that violated the requirements contained in the HEA and the regulations. These weaknesses and their effects are fully discussed in the *Audit Results* section of this report.

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 Departmental action on the audit.

Mr. Greg Woods
Chief Operating Officer
Student Financial Assistance
U.S. Department of Education
Regional Office Building, Room 4004
7th and D Streets, SW
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 if you wish to discuss the contents of this report, please contact William Allen at (816) 880-4024. Please refer to the control number in all correspondence related to the report.

Sincerely,

Lorraine Lewis

Enclosure

WILLIAM PENN
UNIVERSITY
201 TRUEBLOOD AVENUE
OSKALOOSA, IOWA 52577

OFFICE OF THE PRESIDENT

July 20, 2001

Mr. William Allen
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
10220 North Executive Hills Boulevard
Kansas City, MO 64153

RE: Draft Audit Report: Control Number ED-OIG/A07-B0001

Dear Mr. Allen:

Attached please find William Penn University's response to the Draft Audit Report issued on May 24, 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 no 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,

Thomas F. Boyd, Ph. D.
President

Attachment

515-673-1076 PHONE • 515-673-1385 FAX • PRESIDENT@WMPENN.EDU

WILLIAM PENN UNIVERSITY'S RESPONSE TO THE DRAFT AUDIT REPORT OF THE U.S. DEPARTMENT OF EDUCATION OFFICE OF INSPECTOR GENERAL (Control Number ED-OIG/A07-B0001)

William Penn University (the "University," or "WPU") is a not-for-profit comprehensive liberal arts university founded in 1873 by Quaker pioneers. The University's main campus is located in Oskaloosa, Iowa. The University is accredited by the North Central Association of Colleges and Secondary Schools, and is also approved by the Iowa State Board of Education and by the State Approving Unit for Veterans Education. The University has consistently maintained low cohort default rates: 11.8 percent in fiscal year ("FY") 1999, 12.8 percent in FY 1998, 11.9 percent in FY 1997, and 9.4 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 College for Working Adults ("CWA") programs. The CWA programs use a "cohort model" of learning in which small groups of students (no more than 22) 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. CWA students meet once a week in large groups with a faculty member, and again each week in smaller "study teams" for additional instruction. The CWA courses average five 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 CWA programs provided the required amount of instructional time as defined by the 12-Hour Rule." Draft Audit Report at 1. Following this conclusion, the Office of Inspector General ("OIG") incorrectly asserts that the University overawarded Title IV funds to CWA students. Draft Audit Report at 4.

The University made two requests for extensions of time in which to assemble documentation and prepare a full response to the Draft Audit Report. The first requested extension would have permitted the University until August 22, 2001 to submit its comments, and the second requested extension would have provided a deadline of August 3, 2001. Both requests were premised on the fact that the University was previously required to submit comments to the U.S. Department of Education ("the Department") concerning the OIG's previous report entitled *"William Penn University, College for Working Adults' Administration of Title IV Programs – Commissioned Sales"* (ED-OIG/A07-90035), which it did on June 14, 2001. Only after that previously assigned task was completed was the University able to turn its full attention to the present Draft Audit Report. The issuance of the Draft Audit Report also coincided with the period in the academic calendar when nearly all of the relevant University officials and staff have prearranged trips away from campus for admissions and alumni development activities, or for personal leave, as nearly all higher education professionals do annually following the spring commencement season. This fact significantly limited the availability of key University personnel during the month of June and into July. Consequently, the University has been unable to fully consult all relevant individuals and review all of the available documentation necessary to prepare a full and fair response to the Draft Audit Report. The OIG's insistence on receiving the University's comments at this time may, therefore, require

the University to raise additional factual and legal issues in a subsequent legal appeal, perhaps for the first time.

The University demonstrates that its CWA programs fully satisfied the 12-Hour Rule and that such compliance is fully and appropriately documented. The additional documentation sought by the OIG ("the OIG 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.

I. THE UNIVERSITY'S COLLEGE FOR WORKING ADULTS PROGRAMS SATISFY THE 12-HOUR RULE, AND THE UNIVERSITY HAS ADEQUATELY DOCUMENTED ITS COMPLIANCE.

Although the Department has already concluded that "[t]here is no meaningful way to measure 12 hours of instruction"[1] for nontraditional education programs like those questioned by the Draft Audit Report, the University implemented various policies and procedures to ensure that the CWA 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 Team meetings constitute instructional activity.

The CWA study team 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 team 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 team meetings are, therefore, clearly related to class preparation, and qualify as instructional activity under the 12-Hour Rule.[2]

B. Study Team meetings were regularly scheduled.

As part of the CWA curriculum, students within each study team are required to develop a "Study Team Constitution." In accordance with the CWA course modules, each study team's

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[1] 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.

[2] The Draft Audit Report does not seem to dispute that study team meetings constitute instructional activity, however the OIG excludes many such meetings from its 12-Hour Rule calculations because they fail to satisfy the new OIG documentation rules.

constitution establishes that particular group's weekly meeting time and location, and also sets forth specific requirements regarding attendance and any penalties, within the study team's control (e.g., fines), for an individual's non-attendance.[3] Faculty members specifically instructed students about these required provisions of the constitutions during the CWA orientation,[4] and each of the seven study teams in the OIG's sample included their weekly meeting time and location in its constitution.

In addition to the obvious documentary evidence described above, several other factors clearly indicate that the study team meetings were both "regular" and "scheduled." The specific tasks to be performed and completed by the study team in a given week were specified in the course module, and all students enrolled in the course were required to participate in study team activities. Also, each designated study team session was, by curriculum design, slated to occur between specified meetings with the faculty instructor. During study team 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 team meetings by reviewing the designated team assignments and projects. The study team meetings were therefore regularly scheduled, and the Draft Audit Report's statement to the contrary is simply wrong.

C. The University's attendance policy covered study team meetings.

The attendance policy for CWA programs states that if a student misses more than two classes, the student will receive a failing grade. The OIG apparently misinterprets the term "classes" to mean only the course workshops conducted by faculty members, and therefore states "the University did not have an equivalent policy for study group attendance." Draft Audit Report at 3. In fact, the University defines the term "classes" to include both faculty-led sessions and the study team meetings. The attendance policy therefore applies equally to course workshops led by faculty members and to the study team meetings. If a student missed more than two sessions of either the faculty-led class sessions or more than two study team meetings, or any combination thereof totaling more than two absences, the student received a failing grade for the course. The Draft Audit Report's statement that there was no attendance policy for study teams is therefore also wrong.

D. The University adequately monitored Study Team meeting attendance.

Because the study team meetings were so central to the CWA curriculum, the Student Services Director developed systematic procedures for monitoring both the occurrence of study

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[3] The audit workpapers reveal that the OIG reviewed the study team constitutions, however there is no mention of them in the Draft Audit Report because, presumably, the auditors did not appreciate that the constitutions' provisions were binding between study team members, and between the students and the University.

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

team meetings and individual members' attendance at those meetings. As shown in the audit workpapers, students were required to submit Study Team Reports identifying the date and time of each study team meeting. These Study Team Reports were modified over time to request more detailed information about the meetings, including the subject matter covered by students in the particular study team sessions.

The OIG apparently disregards these Study Team Reports because they are submitted directly to the University rather than going through the individual faculty member responsible for the course. See Draft Audit Report at 3. There is simply no statutory or regulatory basis for this distinction, and the report provides no reason for creating such a distinction. All that is required by the 12-Hour Rule is that study team meetings were regularly scheduled,[5] which they were as described above.

E. Study Teams are part of an integrated curriculum module, and faculty members were aware of which students did not attend the Study Team meetings in any given week.

The Draft Audit Report's statement that "faculty were not required to monitor study group attendance" reflects the new OIG documentation rule purporting to require the physical presence of faculty for instructional time to count towards 12-Hour Rule compliance. 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 team meetings is not required for the faculty member to assess whether a student adequately participated in the weekly study team meetings. The course module indicates that study team 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.[6]

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

Some CWA courses in mathematics and business utilize traditional examinations, in

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[5] This interpretation 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 is on whether instructional time is "regularly scheduled," not on whether an institution can fully document that students actually completed twelve hours of instructional activity in any given week.

[6] 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 CWA course curriculum, such issues are plainly beyond the OIG's scope of authority.

additional to the study team 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.[7] The new OIG 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.

G. There is no statutory or regulatory requirement for Study Teams to meet at locations owned, leased or otherwise monitored by the University.

In perhaps the most far-reaching attempt to develop a new legislative requirement, the report disallows certain study team meetings because they were not held "at locations monitored by the University." Draft Audit Report at 2. Once again, there is simply no statutory or regulatory authority whatsoever under which the location of the study team meetings is relevant to compliance with the 12-Hour Rule. The regulatory provision, and the Department's commentary accompanying the regulation, explicitly acknowledge that instructional time may include educational activity that occurs off-campus or at locations otherwise not within the University's control:

> *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 above comments related directly to the 12-Hour Rule's application to non-traditional programs like the CWA courses at issue in the present audit, i.e., "lifelong learning" programs designed to reduce the number of days spent in a traditional classroom setting.

The Draft Audit Report simply provides 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. 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,

[7] 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.

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 ACKNOWLEGDED 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 College for Working Adults. 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).[8] 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

[8] 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).

> this issue.... The Department is requested to report the results of the discussions and any anticipated action on the part of the Department with 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 has not yet issued its report on the 12-Hour Rule. 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 has not yet complied with a legislative mandate on the very same subject.

As this audit is pending, Congress is simultaneously considering legislation that would repeal the 12-Hour Rule. On the same date that the Draft Audit Report was issued, the "Internet Equity and Education Act of 2001" (H.R. 1992) was introduced.[9] The bill 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.'"[10] The University's CWA course modules – combining traditional, faculty-led "classes," mandatory "study teams" in which students worked on graded group projects, and individually assigned graded projects – fall within this category of educational programs. The CWA 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 utilizes an erroneous methodology to determine the number of "study team hours" required under the 12-Hour Rule.

The Draft Audit Report wrongly calculates the number of additional instructional hours, outside of the weekly four-hour faculty workshop ("classroom hours"), that CWA students needed to complete under the 12-Hour Rule. The OIG simply calculated the number of

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[9] HR 1992 was marked up and reported by the House Subcommittee on 21st Century Competitiveness on July 11, 2001.

[10] 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.

classroom hours for the seven study teams in its sample, which totaled 1408 hours, and determined that another 1408 study team hours were required. Draft Audit Report at 3. This methodology would require the seven groups to meet a total of 2816 instructional hours in order to qualify under the regulation. However, this would be far above the actual hours needed to qualify as a full-time program eligible for Title IV participation.

The 12-Hour Rule requires the equivalent of 360 instructional hours per academic year. Draft Audit Report at 2. Therefore, the seven groups of students in the audit sample would have to have a total 2520 hours (7 groups times 360 hours per group) instructional time, not the 2816 hours claimed by the OIG. Because the Draft Audit Report expressly credits 1408 classroom hours, the balance of instructional time required for study team meetings and other activities is 1112 hours, not another 1408. The OIG's methodology therefore requires 296 hours more than are required by the 12-Hour Rule.[11]

B. The Draft Audit Report arbitrarily excludes documented Study Group meetings.

The Draft Audit Report cites "documentation" of 422 hours of study team meetings. However, the audit workpapers reveal that the OIG arbitrarily excluded evidence of additional study team meeting hours. According to the workpapers, the OIG gives credit to a study team meeting only if the Study Team Report indicates both a starting and ending time for the meeting, while ignoring other documented study team meetings simply because an ending time is not shown on the Study Team Report. In making this arbitrary distinction, the Draft Audit Report ignores clear and convincing evidence of regularly scheduled study team meetings that obviously took place. This action by the OIG once again presumes documentation requirements – in this case, recorded starting and ending times for all study team meetings – that are not required by the 12-Hour Rule. The regulation merely requires that such meetings be "regularly scheduled."

The new OIG documentation rules are again inconsistent with the Department's own regulations and published commentary. As discussed in Section II above, the Department based the 12-Hour Rule on its definition of a full-time student. The regulations define a "full-time student," in relevant part, as follows:

> *Full-time student:* An enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. 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.
> ...

[11] Because the OIG gives credit for 422 study team hours, the University has proven 1830 hours under the OIG documentation rule, out of the required total of 2520.

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.

C. 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 team meetings. For example, the regulation permits time spent in "preparation for examinations" to be counted. The new OIG 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 CWA 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. Indeed, students completed "end-of-course surveys" on which they are asked how much time was spent, outside of both the class sessions and study team meetings, on the course. Most students indicated several hours of preparation for examinations or other graded projects, and such time must be counted towards the 12-Hour Rule. The OIG, however, failed to review[12] or chose to ignore the end-of-course surveys and the additional hours they represent.

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/A07-B0001), 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,

WILLIAM PENN UNIVERSITY
Dr. Thomas F. Boyd, President

[12] There is nothing in the OIG's audit workpapers, provided to the University on June 21, 2001, indicating that the auditors reviewed the end-of-course surveys.