



March 18, 2015

Mr. Andrew D. Shackelford  
Partner  
LaSalle Capital Group, LP  
5710 Three First National Plaza  
70 West Madison Street  
Chicago, Illinois 60602

Certified Mail  
Return Receipt Requested  
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RE: **Academy of Healing Arts, Las Vegas, NV**  
**Final Program Review Determination**  
OPE ID: 03110000  
PRCN: 200840926782

Dear Mr. Shackelford:

The U.S. Department of Education's (Department's) San Francisco/Seattle School Participation Division issued a program review report on February 12, 2009 covering the Academy of Healing Arts's (AHA's) administration of the programs authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs), for the 2007-08 and 2008-09 award years. AHA's final response is dated April 20, 2009. A copy of the program review report (and related attachments) and AHA's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by AHA upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

**Purpose:**

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to: (1) identify liabilities resulting from the findings of this program review report, (2) provide instructions for payment of liabilities to the Department, and (3) notify the institution of its right to appeal.

The total liabilities due from the institution from this program review are **\$2,519,979.32**, including \$2,333,367.61 due to the Department and \$186,611.71 due to Federal Financial Education Loan (FFEL) lenders.

This final program review determination contains detailed information about the liability determination for all findings.

This constitutes the Department's FPRD with respect to the liabilities identified from the February 12, 2009 program review report. If AHA wishes to appeal to the Secretary for a review of monetary liabilities established by the FPRD, the institution must file a written request for an administrative hearing. The Department must receive the request no later than 45 days from the date AHA receives this FPRD. An original and four copies of the information AHA submits must be attached to the request. The request for an appeal must be sent to:

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

AHA's appeal request must:

- (1) indicate the findings, issues and facts being disputed;
- (2) state the institution's position, together with pertinent facts and reasons supporting its position;
- (3) include all documentation it believes the Department should consider in support of the appeal. An institution may provide detailed liability information from a complete file review to appeal a projected liability amount. Any documents relative to the appeal that include PII data must be redacted except the student's name and last four digits of his/her social security number (please see the attached document, "Protection of Personally Identifiable Information," for instructions on how to mail "hard copy" records containing PII); and
- (4) include a copy of the FPRD. The program review control number (PRCN) must also accompany the request for review.

If the appeal request is complete and timely, the Department will schedule an administrative hearing in accordance with § 487(b)(2) of the HEA, 20 U.S.C. § 1094(b)(2). The procedures followed with respect to AHA's appeal will be those provided in 34 C.F.R. Part 668, Subpart H. **Interest on the appealed liabilities shall continue to accrue at the applicable value of funds rate, as established by the United States Department of Treasury, or if the liabilities are for refunds, at the interest rate set forth in the loan promissory note(s).**

#### **Record Retention:**

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

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter and the attached report, please contact Dr. Gayle Palumbo at (415) 486-5614. Questions relating to any appeal of the FPRD should be directed to the address noted in the Appeal Procedures section of this letter.

(b)(6)

Martina Fernandez-Rosario  
Division Director  
San Francisco/Seattle School Participation Division

Enclosures:

Protection of Personally Identifiable Information  
Final Program Review Determination

cc: Nevada Commission on Postsecondary Education  
Council on Occupational Education  
USA Funds  
Department of Defense (via e-mail at [osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil](mailto:osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil))  
Department of Veterans Affairs (via e-mail at [INCOMING.VBAVACO@va.gov](mailto:INCOMING.VBAVACO@va.gov))  
Consumer Financial Protection Board (via e-mail at [CFPB\\_ENF\\_Students@cfpb.gov](mailto:CFPB_ENF_Students@cfpb.gov))

**Prepared for**

**Federal Student Aid**  
An OFFICE of the U.S. DEPARTMENT of EDUCATION

**Academy of Healing Arts**

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**OPE ID:** 03110000

**PRCN:** 200840926782

Prepared by:  
U.S. Department of Education  
Federal Student Aid  
San Francisco/Seattle School Participation Division

**Final Program Review Determination**  
**March 18, 2015**

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**A. Institutional Information**

Academy of Healing Arts  
710 South Tonopah Drive  
Las Vegas, NV 89106<sup>1</sup>

Type: Proprietary

Highest Level of Offering: Non-degree, One Academic Year

Accrediting Agency: Council on Occupational Education

Current Student Enrollment: 340 (2008-09)

% of Students Receiving Title IV: 99% (2008-09)

Title IV, HEA Program Funding  
2010-11 Award Year

Source: Common Origination and Disbursement (COD) System

<b>Title IV Programs</b>	<b>Amount</b>
Federal Pell Grants	\$2,673,595.73
William D. Ford Federal Direct Subsidized Loans (Direct Subsidized Loans)	\$931,441.00
William D. Ford Federal Direct Unsubsidized Loans (Direct Unsubsidized Loans)	\$1,384,583.00
William D. Ford Federal Direct PLUS Loans (Direct PLUS Loans)	\$275,604.00
<b>Total:</b>	<b>\$5,265,223.73</b>

Default Rate FFEL/DL:

Cohort Year 2011 26.0%  
Cohort Year 2010 21.2%  
Cohort Year 2009 37.5%

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<sup>1</sup> The Academy of Healing Arts is now closed. The address listed on this page was its previous address.

## **B. Scope of Review**

The U.S. Department of Education (the Department) conducted a program review at the Academy of Healing Arts (AHA) from September 15, 2008 to September 19, 2008. The review continued off-site until October 15, 2008. The review was conducted by Shane Dunne, Gayle Palumbo, and Nancy Taylor.

The focus of the review was on AHA's calculation of the 90/10 revenue rule and the performance of its obligations under the Return to Title IV (R2T4) provisions, as well as on other issues of non-compliance identified during the review. The review consisted of an examination of student files and fiscal records supporting AHA's 90/10 attestation for the fiscal years ended December 31, 2006 and 2007.

In addition, a sample of 30 student files were identified for review from the 2007-08 and 2008-09 (year to date) award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. A program review report (PRR) was issued on February 12, 2009.

### **Disclaimer:**

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning AHA's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve AHA of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

## **C. Findings and Final Determinations**

### **Resolved Findings:**

AHA took the corrective actions necessary to resolve Findings 4, 5, 6, 7, 8, and 9 of the PRR. Therefore, these findings may be considered closed (Appendix C contains a copy of the PRR and Appendix B contains AHA's response to the PRR). The final determinations with respect to the program violations identified in the remaining findings are discussed below.

Two additional Findings (10 and 11) were added to this Final Program Review Determination (FPRD): Finding 10 was added to account for closed school discharges awarded to students after AHA closed. Finding 11 was added to account for unreconciled balances (excess federal cash on hand) at the time of issuance of this FPRD for which no disbursements could be attributed.

### **Findings with Final Determinations:**

The PRR findings requiring further action are summarized below. At the conclusion of each program review finding is a summary of AHA's response to the finding, and the Department's final determination for that finding.

#### **Finding 1. The Calculation of the 90/10 Revenue Results for the Fiscal Year Ended December 31, 2007 Understates the Percentage of Title IV Funds the Institution Received**

***Citation Summary:** Under the Title IV, HEA regulations, a proprietary institution of higher education must demonstrate that it has no more than 90 percent of its revenues derived from Title IV, HEA program funds. See 34 C.F.R. § 600.5(a)(8). An institution must determine the revenue percentage under the following formula, described in 34 C.F.R. § 600.5(d):*

*...Title IV, HEA program funds the institution used to satisfy its students' tuition, fees, and other institutional charges to students*

*divided by*

*The sum of revenues including Title IV, HEA program funds generated by the institution from: tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in 34 C.F.R. § 668.8; and activities conducted by the institution, to the extent not included in tuition, fees, and other institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs...*

*An institution may only include revenue derived from education or training of its students who are enrolled in eligible programs, provided that the activities it conducts are necessary for its students' education or training. Revenues from auxiliary enterprises and activities that are not a necessary part of the students' education, such as revenues from the sale of equipment and supplies to students and revenues from vending machines may not be included in the denominator of the 90/10 calculation. See 34 C.F.R. § 600.5(e)(4) and 2008-09 Federal Student Aid Handbook, Volume 2, School Eligibility and Operations, Page 2-10.*

*Only revenue generated from the sale of nonrecourse institutional loans to an unrelated third party may be counted as revenue in the denominator of the 90/10 calculation to the extent that the revenues represent actual proceeds from the sale. See 2008-09 Federal Student Aid Handbook, Volume 2, School Eligibility and Operations, Page 2-10. An institution may not consider proceeds generated from an advance under a collection agreement in the denominator of the 90/10 calculation.*

*An institution may not include as Title IV, HEA program funds in the numerator, nor as revenue generated by the institution in the denominator, the amount of Title IV, HEA funds that must be refunded or returned under 34 C.F.R. § 668.22. See 34 C.F.R. § 600.5(e)(1)(iv).*

**Noncompliance Summary:** *In support of its 90/10 calculation for the fiscal year ended December 31, 2007, AHA provided the Department with a copy of a spreadsheet, entitled 90-10 Calc 1-1-07 to 12-31-07 MA – Published.xls provided by McClintock & Associates, the certified public accounting firm that prepared its audited financial statements. The spreadsheet provides the specific transactions used by AHA as a basis for the attestation described in Note J of its audited financial statements as to the percent of cash basis revenue it derived from Title IV, HEA funds (88.82%). Transactions identified as 'SFA' in the 'SaBillCode' field of the spreadsheet were treated as Title IV in the calculation and included in both the numerator and denominator of the 90/10 calculation. Transactions identified as 'CASH' were included only in the denominator of the ratio.*

*In October 2008, AHA's independent auditor submitted a restated calculation of its 90/10 Revenue for the fiscal year ended December 31, 2007. According to the auditor, the original calculation in the audited financial statements was inaccurate because of formula calculation errors in the previously submitted work papers (but no errors in the underlying student-by-student data). The revised calculation indicated that AHA derived 85.04% of its cash basis revenue from Title IV, HEA funds during the year as follows:*

\$2,401,948.00	<i>Title IV, HEA Funds Used to Satisfy Institutional Charges</i>
\$ 250,442.00	<i>Cash and Other Sources Used to Satisfy Institutional Charges</i>
\$ 4,829.00	<i>Adjustment to Offset Negative Amounts in Student Denominators</i>
\$ 57,185.00	<i>Clinic Revenue</i>
\$ 34,782.00	<i>Recourse Sale</i>
\$ 75,290.00	<i>Non-recourse Sale</i>
\$2,824,476.00	<i>Total Denominator</i>

*Reports from the National Student Loan Data System (NSLDS), containing Federal Family Education Loan (FFEL) disbursement activity, and COD, containing Pell Grant and Direct Loan disbursement activity, revealed \$3,086,993.45 (net of refunds) in disbursements to students during the fiscal year. AHA reported that it did not maintain Title IV credit balances during the year, which means that all Title IV, HEA funds the institution administered were applied to tuition and fees or disbursed to students and subject to further analysis under the 90/10 measures. This means that AHA's calculation must be able to demonstrate that all Title IV funds provided to a student were used to pay tuition and fees before any cash payments could be included from that student.*

*Under the regulations, an institution must presume that Title IV, HEA funds are used to satisfy tuition, fees and other institutional charges, regardless of whether the funds were delivered to the student or parent or credited to the student's account at the institution. After comparing the reported 90/10 Title IV funding with the Title IV amounts that were administered by AHA, it is evident there is a \$685,045.45 difference between the revised calculation amount and the disbursements appearing in NSLDS and COD. AHA is required to offset any cash payments from students by the amount of Title IV, HEA funds provided to those students, since Title IV, HEA funds are deemed to pay for 90/10 revenues ahead of any cash payments. The amount of Title IV, HEA funds not included in the AHA calculation is more than double the amount of cash payments and "other sources of revenue" that AHA reported, and the amount also exceeds the total revenues that AHA reported in its 90/10 calculation.*

*The Department determined that 17 of the 30 students in the review sample provided some sort of non-Title IV revenue to AHA during the fiscal year. The PRR cited examples of five students where there was inconsistent information in the files relative to the revenue provided on behalf of those students.*

*Lastly, AHA improperly included the following as eligible non-Title IV revenue:*

- *\$75,290 it received as an advance on receivables pledged to a third party;*
- *\$1,050 it received as proceeds from the rental of a massage table and included in the denominator of the 90/10 calculation; and,*
- *\$6,426.26 in Title IV, HEA loan funds for two students.*

**Required Action Summary:** *In response to this finding, AHA was required to reconstruct its 90/10 revenue attestation for the fiscal year ended December 31, 2007 using the 90/10 Revenue Attestation Model provided by the Department on an Excel spreadsheet. AHA was also required to submit a copy of the enrollment contract and ledger for each student identified on the spreadsheet.*

**AHA's Response:** AHA submitted its written response to the PRR in a letter dated April 20, 2009. The letter is attached hereto at Appendix B.

In its response, AHA agreed with the portion of the finding citing the errors related to its inclusion of \$1,050 in non-Title IV eligible revenue it received from the rental of a massage table. It also agreed that its original 90/10 calculation misclassified \$6,426.26 in Title IV loan funds as non-Title IV revenue.

However, the response also claims that the finding is without merit for the following two reasons:

- The PRR's reliance on the NSLDS and COD systems for determining the amount of Title IV funds received during the fiscal year is inconsistent with the regulations which require 90/10 revenue to be assessed under the cash basis of accounting.
- The PRR incorrectly excludes the proceeds from a sale of student accounts receivable from the denominator of the 90/10 calculation.

As required in the PRR, AHA submitted a reconstruction of its 90/10 revenue calculation for the fiscal year, using the spreadsheet format prescribed in the PRR. The spreadsheet contains three sections of revenue classification: (1) a student-by-student computation that classifies sources of Title IV and non-Title IV funds received on behalf of 683 students, to satisfy those students' institutional charges; (2) a schedule of revenue derived from a massage clinic that is used as part of its Title IV eligible Massage Therapy program; and (3) revenue it received from the November 2007 transactions related to transfers of student receivables that were disallowed in the PRR, but adjusted to exclude the portion it claims were derived from non-eligible program sources. The results of AHA's 90/10 reconstruction are summarized as follows:

<b>Summary of AHA's Reconstructed 90/10 Calculation</b>	
<b>Section 1: Student by Student Revenue Calculation</b>	
\$ 2,961,738.83	Title IV, HEA funds Used to Satisfy Institutional Charges
239,929.89	Cash and Other Sources Used to Satisfy Institutional Charges
<b>\$ 3,201,668.72</b>	<b>Total</b>
<b>Section 2: Revenue Generated by Eligible Program Activities</b>	
\$ 55,800.00	Massage Clinic Revenue
4,450.00	Registration Fees Not Detailed in Section 1
397.08	Bad Debt Recovery Payment from one student
246.73	Interest Payments from three students
<b>\$ 60,893.81</b>	<b>Total</b>
<b>Section 3: Revenue Generated from Student Receivables</b>	
\$ 34,959.76	Conrad purchases for eligible programs
67,009.77	Amount Received from Conrad Under the Accounts Receivable and Pledge Agreement <sup>2</sup>
(2,000.00)	Accounts Receivable Recourse Payment
(2,527.51)	Accounts Receivable Recourse Payment
(1,804.95)	Accounts Receivable Recourse Payment
<b>\$ 95,637.07</b>	<b>Total</b>

<sup>2</sup> This stated amount in AHA's reconstruction is less than the original \$75,290 disputed in the PRR.

<b>Summary of AHA's Reconstructed 90/10 Calculation</b>	
<b>90/10 Ratio Formula:</b>	Title IV Funds Used to Satisfy Institutional Charges  <b>divided by</b>  Total Section 1 + Total Section 2 + Total Section 3
<b>Revised 90/10 Results:</b>	$\frac{\$2,961,738.83}{\$3,358,199.60}$ <b>88.19%</b>

AHA disagreed with the Department's determination that funds it received as a result of entering into an agreement with a third party in November 2007 were not eligible to be included in the denominator of the 90/10 ratio. In support of its argument, AHA claimed the PRR relied upon an inaccurate interpretation of guidance referenced in the Federal Student Aid Handbook by imposing a limitation on revenue generated from tuition and fees, to include only a sale of student receivables. Moreover, AHA argued that the Department may not rely upon sub-regulatory guidance provided in the Handbook to impose liabilities or other adverse regulatory determinations.

AHA further argued that the underlying November 2007 Accounts Receivable Pledge and Advance Agreement giving rise to the disputed revenue was a bona fide sale of receivables in spite of "imprecise nomenclature" in the agreement. In support of its argument, AHA provided the Department with a copy of a "Sale and Assignment Agreement," dated April 1, 2009, revising the original pledge and advance agreement to reflect the parties' original intent to effectuate a sale of the receivables.

In conclusion, AHA requested that in light of its response and the documentation it provided, the Department close the finding without any further action on its part.

**Final Determination:** The Department has considered AHA's response to this finding. AHA's arguments are addressed here in the same order they were presented by AHA in its PRR response letter.

Reliance on NSLDS and COD is Inconsistent with Regulatory Guidance Provided by the Secretary

In the PRR, the Department stated that Title IV funding information from the COD and NSLDS systems for the fiscal year ended December 31, 2007 was \$685,045.45 greater than the amount of Title IV stated in the numerator of AHA's 90/10 ratio. The Department considered this margin to be large enough to pose a concern that AHA materially underreported the Title IV portion of its revenues under the 90/10 rule. The

AHA suggested that the Department's comparison is inconsistent with regulatory guidance on the use of the cash basis of accounting. In support of its position, AHA directs attention to the Secretary's explanation of the use of cash basis accounting for 90/10 purposes in the July 15, 1999 edition of the *Federal Register*. See 64 FR 38272-38282. While AHA accurately cited the remarks, its authoritative interpretation of those remarks is misplaced. The subject regulations were not promulgated in this Notice of Proposed Rulemaking, but rather in the final rule on those matters.

In the final rule, the Secretary addressed commenters' questions on how to treat funds that are received by an institution at the end of a fiscal year, but not disbursed until the following year. In such a case, the Secretary clarified that an institution must use the fiscal year when those funds were *disbursed* to a student's account. This means that institutions should measure revenue for the purposes of reporting its 90/10 results on the cash basis of accounting, using the date those funds were disbursed to the student (which is synonymous with the stated language in the promulgated regulation, "Title IV, HEA funds used to satisfy institutional charges") and not the literal inflow of cash to the institution. See 64 FR 58610, October 29, 1999.

Accordingly, the Department is not persuaded by AHA's contention that the PRR's reliance on data in NSLDS and COD was inconsistent with regulatory guidance on use of the cash basis of accounting for determining Title IV revenues.

#### Significant Delays in Updates to Disbursement Data in NSLDS

AHA's statement about the delays between an institution's updating of data and the reflection of this information in NSLDS is correct. However, the Department did not rely upon the date that disbursement data was added to NSLDS. Instead, the Department relied upon the date that AHA reported disbursements.

Under the FFEL program, AHA would set the payment period disbursement schedule at the time it certified the student's loan, and the lender disbursed the funds on those dates unless AHA notified the lender to delay or cancel the disbursement. Under the Direct Loan and Pell Grant programs, AHA reported disbursements through batch records sent through its ED Express software to COD. Under both Title IV delivery systems, AHA was solely responsible for the accuracy of information about the Title IV awards it provided to its students, including the dates and amounts of disbursements.

Accordingly, the Department's reliance on either source should have produced the same results. Any difference can only be attributed to a lack of administrative capability over AHA's Title IV disbursement reporting processes.

While AHA did not acknowledge such in asserting its objection to the PRR's finding, the Department notes that AHA's reconstructed calculation yielded an increase of \$559,790 in Title IV funds over its previously stated results (an increase of 23% over the amount

reported under its previous calculation). In essence, AHA asked the Department to rely on student ledger data it knew was problematic by its very own analysis.

The Department performed queries of each student's information in order to determine whether adjustments to the spreadsheet provided by AHA were necessary. The Department identified and made nine adjustments. These adjustments are described in the paragraphs that follow.

**Adjustment 1:** *Application of the Title IV Presumption Rule to Title IV Revenue Reported in the Numerator and Denominator of the Ratio*

The numerator of an institution's 90/10 ratio includes Title IV funds used to satisfy its students' institutional charges. Under the regulations, an institution must presume Title IV funds were used to satisfy institutional charges, regardless of whether the institution disburses the funds by crediting the student's account or pays the student or parent directly.<sup>3</sup> This prevents an institution from artificially understating the numerator of its calculation by first paying the student and then treating the student's subsequent payments of institutional charges as non-Title IV revenue. See 34 C.F.R. § 600.5(e)(2).

As mandated by the Title IV presumption rule, the numerator of an institution's 90/10 ratio represents the total amount of Title IV funds disbursed to students during the subject fiscal year, minus

(1) Returns it made to the Title IV programs under the provisions described in 34 C.F.R. § 668.22; and

(2) Credit balances it retained on behalf of students at the end of the year, provided that the balances are Title IV credit balances.

A Title IV credit balance arises whenever an institution disburses Title IV funds by crediting a student's account, and the total amount of all Title IV funds credited exceeds the amount of tuition, fees and other institutional charges assessed the student. See 34 C.F.R. § 668.164(e).

As demonstrated in the spreadsheet provided by the institution, AHA limited the amount of Title IV revenue it included in its 90/10 calculation to the extent of institutional charges it assessed to each student. Since the regulations prescribe that the numerator of

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<sup>3</sup> The regulations permit an institution to not presume institutional charges were satisfied by Title IV funds to the extent those charges were satisfied by (1) non-federal public agencies or from sources independent of the institution; (2) contractual arrangements meeting the requirements of 34 C.F.R. § 600.7(d); and (3) funds provided by state tuition plans. In the spreadsheet, AHA did not disclose any revenue from these sources.

the ratio includes Title IV funds *used to satisfy institutional charges*, AHA's application of this method was properly applied for most of the students in the spreadsheet.

However, in cases where the student withdrew and AHA reduced the students' institutional charges in accordance with its refund policy, this method was improper when AHA did not also return funds to the Title IV programs or retained an overdue Title IV credit balance beyond the end of the fiscal year. The Department's review of the spreadsheet found both types of errors in AHA's 90/10 reconstruction.

The Department performed the following activities to compensate for AHA's errors in order to ensure that its 90/10 calculation, with respect to Title IV revenue, complied with the Title IV presumption rule:

#### Examination of Title IV Credit Balances Reported by AHA

In its reconstructed 90/10 calculation, AHA identified \$35,506.85 in Title IV credit balances it held on behalf of 24 students at the end of the fiscal year. In the Department's 90/10 calculation, the formula for determining Title IV revenue used to satisfy institutional charges excludes the Title IV credit balance amounts for these students. The Department reviewed the Student Ledger Cards (SLCs) for these students to determine whether legitimate Title IV credit balances existed on their accounts at the end of the fiscal year.

For students who were enrolled through the end of the fiscal year, the Department examined documents to determine if the credit balance identified on AHA's spreadsheet was a Title IV credit balance. For students who withdrew prior to the end of the fiscal year, the Department applied guidance issued on the treatment of Title IV credit balances when students withdraw, as found in Dear Colleague Letter (DCL) GEN 04-03, November 2004. In cases where AHA complied with the provisions of the guidance, the Department considered the Title IV credit balance to be properly excluded from the 90/10 calculation and made an adjustment.

Pursuant to DCL GEN 04-03, an institution must first perform a Return to Title IV (R2T4) calculation in the manner required under 34 C.F.R. § 668.22 to determine if the student owes a grant overpayment as a result of the withdrawal. Next, the institution performs a withdrawal calculation under its own institutional policy to determine whether doing so creates a new or larger Title IV credit balance. The institution must pay the resulting Title IV credit balance to the student within 14 days of performing the R2T4 calculation.

AHA did not follow the Department's guidance on the treatment of Title IV credit balances and, therefore, the Department has made adjustments to the 90/10 calculation in order to account for these errors.

Summary of Revenue Derived from Title IV Sources

The Department has determined that AHA failed to apply the Title IV presumption rule in evaluating the results of revenue it received from 340 of the 683 students in its reconstruction of the 90/10 calculation for the fiscal year. As a result, it underreported **\$182,466.14** in Title IV revenue from the numerator and denominator of the ratio.

**Adjustment 2:** *Application of the Title IV Presumption Rule to Non-Title IV Revenue Reported in the Denominator of the Ratio*

The amount of revenue included in a 90/10 calculation by student is limited to the extent of those students' institutional charges. The Department's application of the Title IV presumption rule in the preceding adjustment displaced non-Title IV funds in 53 cases where AHA received revenue from students that met or exceeded their institutional charges. The total individual student adjustments reduced the denominator of AHA's 90/10 ratio by **\$3,120.28**.

The cumulative effect of Adjustments 1 and 2 revised AHA's reconstructed 90/10 ratio to:

<u>\$3,144,204.97</u>	<b>88.88%</b>
\$3,537,545.46	

**Adjustment 3:** *Amounts of Non-Title IV Revenue Claimed by AHA that Exceeded Payment Information Recorded in its General Ledger*

Shortly after the review team's on-site visit, AHA provided the Department with an export of its QuickBooks General Ledger which included cash transactions during the subject fiscal year in a Microsoft Excel workbook dated September 22, 2008.

The Department imported the AHA spreadsheet and 2007 General Ledger (GL) workbooks as two tables within a relational database created in Microsoft Access 2010. The students' last and first names in the 9010RW table were concatenated to create a compatible field in which to join with the GL table in a one-to-many relationship.

To match the GL transactions to each student in the spreadsheet, the Department designed a query to report each transaction where AHA collected payments from a student and subsequently deposited those funds in its operating account. These amounts were compared with the amount of non-Title IV revenue for each student claimed by AHA. For 172 students, the amount of non-Title IV revenue stated by AHA in its reconstruction exceeded identifiable payment transactions associated with those students. In each case, the Department made an adjustment for the difference. The total student by student adjustments for overstated non-Title IV revenue equals **\$97,111.27**. The cumulative effect of this adjustment revised the 90/10 ratio to:

\$3,144,204.97            **91.39%**  
\$3,440,434.19

**Adjustment 4: Non-Title IV Revenue – Registration Fees**

An institution must consider as revenue only those funds it generates from tuition, fees, and other *institutional charges* for students enrolled in eligible programs as defined in 34 C.F.R. § 668.8. See 34 C.F.R. § 668.28(a)(3)(i). Institutional charges are defined as tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally related expenses assessed by the institution. See 34 C.F.R. § 668.22(g)(2).

An educationally related expense is a cost directly attributable to the student's educational program. It excludes administrative or discretionary fees incurred by the student such as fines, health insurance or the cost of athletic or concert events. In particular, application fees are excluded from institutional charges because they are not an educational cost. See 59 FR 22356, April 29, 1994.

According to AHA's enrollment contracts and School Catalog, the registration fee assessed to students is non-refundable and must be paid in cash prior to starting class. Regardless of the term AHA uses to describe the fee, its nature reflects an administrative prerequisite to admission at the institution, and therefore, is aptly titled an application fee. Students enrolled in AHA's educational programs do not have a choice to register for select classes, as the schedule and order of its courses are uniformly applied to each cohort member who starts the first course in the program on the same date.

More importantly, AHA does not permit the students to use Title IV funds to satisfy the fee. This policy automatically excludes revenue generated by the fees from items that would be counted in the cost of attendance for the program, and therefore is not program revenue for purposes of the 90/10 calculation. AHA cannot categorically exclude a program charge from Title IV payments and have it count in the 90/10 calculation. These characteristics preclude the revenue AHA generates from the fees from being included in the 90/10 ratio. The Department identified 451 students on the spreadsheet who started their programs on or after January 1, 2007. Each of these students was assessed a registration fee of \$20.00 and they and others were sometimes assessed the fee again when re-enrolling in classes after a period of nonattendance.

The Department reviewed the GL transactions for evidence of registration fee payments and made further deductions to those student records with a remaining unadjusted balance of non-Title IV revenue. The total individual student adjustments made, to exclude revenue from registration fees, equal **\$6,034.45**. The cumulative effect of this adjustment revised the 90/10 ratio to:

\$3,144,204.97            **91.55%**  
\$3,434,399.74

**Adjustment 5:** *Non-Title IV Revenue – Payments to Students for Passing GED Test*

The Department's review of the GL reveals that AHA paid students a reward of \$50.00 when they passed the general educational development (GED) test. These transactions are identified in the GL by the text, "CONGRATULATIONS!" in the memo field of those records. AHA's payments to those students are recorded as debits to the 70208 Student Testing-GED expense account.

AHA paid \$1,450.00 to 29 of the 683 students in the spreadsheet. Each of these students subsequently made non-Title IV payments towards their institutional charges. The Department views these payments to students as negating any cash payments reported by those students. The Department identified 20 students with a remaining unadjusted balance of non-Title IV revenue and deducted the lesser of the amount of the student's award or the remaining unadjusted balance of non-Title IV revenue provided by the student. The total individual student adjustments equal **\$970.00**.

The cumulative effect of this adjustment revised the 90/10 ratio to:

\$3,144,204.97            **91.58%**  
\$3,433,429.74

**Adjustment 6:** *Non-Title IV Revenue Used to Satisfy Students' Institutional Charges – Miscellaneous Adjustments*

The Department made other adjustments that do not fit into the categories above. These include instances where non-Title IV revenue claimed by AHA had already been exhausted by applying previous adjustments.

The individual student adjustments equal **\$3,587.58**. The cumulative effect of this adjustment revised the 90/10 ratio to:

\$3,144,204.97            **91.67%**  
\$3,429,842.16

**Adjustment 7:** *Non-Title IV Revenue Generated Under the Accounts Receivable Pledge and Advance Agreement with Conrad Acceptance Corporation*

The Department reviewed AHA's response to the PRR finding that the revenue generated from the *Accounts Receivable Pledge and Advance Agreement* was not eligible for inclusion in the denominator of AHA's 90/10 ratio. AHA stated that "notwithstanding the name of the November 2007 agreement or certain imprecise nomenclature contained

therein, the agreement was intended to effectuate a sale.” In addition, AHA and Conrad Acceptance submitted a revised agreement the parties executed in April 2009 to support its position.

The final determination on this matter is based on the provisions of the original agreement that were in effect during the fiscal year covered by AHA’s 90/10 report. AHA’s assertion in its response that \$75,290.00 (and later revised downward to \$67,009.77) it received from Conrad was the result of a sale of certain accounts receivable is contradicted by the written terms of the agreement.

On this basis, the Department determines the payment made to AHA by Conrad to be an advance on the future collectability of the accounts in exchange for a security interest in those assets and the right to retain servicing fees. The Department does not agree the language of the agreement and its underlying transactions represented a sale of the institution’s assets. Therefore, the Department did not include the \$67,009.77 AHA received in consideration for entering into the agreement as revenue in its calculation of AHA’s 90/10 ratio.

The cumulative effect of this adjustment revised the 90/10 ratio to:

<u>\$3,144,204.97</u>	<b>93.5%</b>
\$3,362,832.39	

As a result of the seven adjustments described above, the Department has made a final determination that AHA received 93.5% of its revenues from the Title IV programs. As such, AHA lost its eligibility to participate in the Title IV programs on January 1, 2008, and due to this determination, remained in this status for the remainder of that calendar fiscal year, through December 31, 2008.

All Title IV funds disbursed for payment periods (for Pell Grants) and enrollment periods (for student loans) occurring entirely within this period of ineligibility are subject to repayment to the Department as liabilities. The scope of these liabilities is determined by applying the provisions of 34 C.F.R § 668.26(d), which govern the disbursement of Title IV funds at the end of an institution’s participation in the Title IV programs.

In accordance with these regulations, the Department establishes liabilities for disbursements of Pell Grant awards AHA made between January 1 and December 31, 2008, as indicated in NSLDS. Moreover, FFEL disbursements were included within the scope of liabilities if the loans were disbursed between January 1 and December 31, 2008. In the case of the student loan programs, liabilities are established based on an estimated loss to the government on these loans. AHA is not required to repay the principal portion of the loans. This is discussed further below.

In applying the above criteria, the Department identified 1145 individual students who received disbursements during this ineligible period of time, the calendar year 2008. The total disbursements include Pell Grants in the amount of \$1,346,985, FFEL subsidized loan disbursements in the amount of \$1,479,558, FFEL unsubsidized loans in the amount of \$1,709,990, FFEL PLUS loans in the amount of \$107,742, DL subsidized loans in the amount of \$1,212,320, DL unsubsidized loans in the amount of \$1,746,720, and DL PLUS loans in the amount of \$214,342. A spreadsheet detailing the disbursements in these categories can be found at Appendix D.

**Finding 2. Over 50% of the Students Selected for the 2007-08 Award Year Did Not Possess a Valid High School Diploma or its Recognized Equivalent**

**Citation Summary:** *An institution of higher education does not qualify as eligible to participate in the Title IV, HEA programs if more than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively. See 34 C.F.R. § 600.7(a)(1)(iv).*

**Noncompliance Summary:** *A review of student files for the 2007-08 year revealed 10 of 15 students sampled did not possess a high school diploma or its recognized equivalent (Students## 1, 3, 6, 7, 8, 9, 10, 12, 14, and 15). AHA does not provide either a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively.*

**Required Action Summary:** *AHA was required to conduct a file review of its student population who enrolled during the 2007-08 award year (July 1, 2007 through June 30, 2008) to determine the proportion of students admitted on the basis of a high school diploma or its recognized equivalent. In performing the file review, AHA was required to submit a report, in spreadsheet format, containing the following elements: Student Last Name, Student First Name, Student Address (most recent available), Student home, cell and work telephone numbers (most recent available) and Student email, Date of Admission, HS Diploma/Equivalent (yes or no), Name of Institution awarding High School Diploma/Equivalent (if applicable).*

*With its response, AHA was required to provide a copy of the student's diploma or GED certification, or if unavailable, a copy of the AHA Attestation of High School Diploma, GED Certification, or Equivalent, completed by the student, for each student admitted on the basis of high school graduation or GED or its equivalent.*

**AHA's Response:** As required by the PRR, AHA submitted a spreadsheet containing the specified data elements, entitled ATB Reconstruction.xls (modified 4/19/2009). The spreadsheet provides information for 603 students, 320 of whom were identified as

regular enrolled students who had either a high school diploma, or one of its recognized equivalents, including the general education development (GED) certificate.

AHA's response also provided supporting documentation for most of the students who it identified in the spreadsheet as having a high school diploma or GED prior to admission. As a result, AHA concludes in its response that it met the institutional eligibility requirement for the 2007-08 award year because only 46.93% (283 of 603) of the students it enrolled during the year did not have a high school diploma, GED, or recognized equivalent.

**Final Determination:** The Department reviewed the documentation provided by AHA for the 320 students identified as having a high school diploma or GED. The Department identified five students on the spreadsheet for whom AHA did not provide any documentation.

For the vast majority (286 of 315) of the remaining students, the Department noted that AHA provided a copy of its *Attestation of High School Diploma, GED Certification, or Equivalent* form signed by the student. However, the form does not identify the high school or GED center that issued the diploma or certification. The form includes the following statement:

"...This certification serves as "reasonable certainty" in establishing that I am a high school graduate or GED recipient. However, I understand that the school is required to make a substantial effort to establish evidence that I am a high school graduate or GED recipient..."

AHA provided copies of high school diplomas or GED certificates for only 35 students.

The Department conducted further research to determine an institution's responsibility to obtain evidence of high school diplomas or their recognized equivalents under state law and found the following provision in the Nevada Administrative Code:

**NAC 394.640 Student's records: Contents; maintenance; inspection. (NRS 394.411, 394.421, 394.441)**

An institution's records concerning a student must include the following verified information:

- (a) A completed and signed copy of the contract or agreement of enrollment.
- (b) A record of all payments made by the student to the institution and all refunds made by the institution to the student, including evidence that the student received receipts for his payments.
- (c) A record of attendance.
- (d) Copies of all correspondence with the student pertinent to his education.

- (e) A list of the appointments made by the institution to assist the student to find employment, if applicable.
- (f) **Evidence that the student met the requirements for entrance to the institution.**
- (g) Evidence that a student receiving an associate's or bachelor's degree has passed an examination upon the constitutions.

The Department contacted the Nevada Commission on Postsecondary Education (the Commission) to obtain a ruling on whether an institution's policy of merely accepting a student's attestation of receiving a high school diploma or GED meets the standard of verifiable evidence cited in NAC § 394.640(1)(f), if that student is admitted by the institution on the basis of possessing a high school diploma or GED. In a written response, the Commission confirmed that such a policy does not meet the applicable standard.

The Department then proceeded to test a sample of the students for which AHA submitted an attestation form to verify whether the student possessed a high school diploma or its recognized equivalent in the State of Nevada. The Department established a population of 89 students who identified on the attestation form that they obtained a high school diploma from an institution within Clark County, Nevada (the county where AHA and a majority of high schools identified on the attestation forms are located). The Department contacted the Clark County Office of Education (CCOE) to perform a verification of the students' attestations. The results of the verification classified students into three categories:

- 56 students who received a Standard Diploma;
- 20 student who received no diploma; and
- 13 students who received an Adjusted Diploma.

CCOE explained that the State of Nevada provides for Adjusted Diplomas to be granted to special needs students who met the requirements of their Individualized Education Plans but did not meet the state and district requirements for a Standard Diploma. The Department sought additional guidance from the Nevada Superintendent of Public Instruction and the Nevada Department of Labor to determine whether students with Adjusted Diplomas could use such credentials to be admitted into a public institution of higher education in the state; and, to qualify for state employment.

The guidance obtained from these agencies indicates that the Adjusted Diplomas could be used for both purposes, and therefore, were given equal weight with Standard Diplomas in the Department's analysis. Therefore, the Department only excluded an additional 20 students from AHA's reconstructed calculation.

Lastly, the Department attempted to contact 40 students who provided an attestation and were identified on the spreadsheet as receiving their high school diplomas from institutions outside of Clark County, NV. Of the 40, the Department received positive confirmations from four, and contacted a fifth student, who refused to provide a confirmation.

One of the confirming students (identified in AHA's records as Enrollment ID 0707BO0887) affirmatively contradicted AHA's enrollment records when asked whether he attended the identified Phlebotomy program. Instead, he stated he attended a one day workshop in AHA's massage clinic.

The stated regulations prescribe that the condition of institutional eligibility be applied to the number of *regular students*. A regular student is defined as a student enrolled for the purpose of obtaining a degree, certificate or recognized educational credential. See 34 C.F.R. § 600.2. Based on the information disclosed by this student, the Department excluded his enrollment from consideration in its review.

In summary, the Department finds that AHA enrolled 294 of 602 students (48.8%), who had a high school diploma or its recognized equivalent during the 2007-08 award year.

Due to the material error rate found in the CCOE sample of attestations (22.5%), the Department's extrapolation of the rate to the remaining 285 attestations would have yielded a reasonable basis for excluding an additional 64 students in its analysis. Therefore, even under the most equitable analysis, the Department finds that AHA did not meet the conditions of institutional eligibility under the provisions of 34 C.F. R. § 600.7(a)(1)(iv) for the 2007-08 award year.

An institution loses its eligibility to participate in the Title IV programs on the last day of the award year in which it fails to meet the condition described in this finding. See 34 C.F.R. §§ 600.40(a)(2) and (a)(3). Therefore, it is the Department's final determination that due to this finding alone, AHA lost its eligibility to participate in the Title IV programs on the first day of the subsequent award year that began on July 1, 2008, and remained in this ineligible status through the end of the award year on June 30, 2009.

All Title IV funds disbursed for payment periods (for Pell Grants) and enrollment periods (for student loans) occurring entirely within this period of ineligibility are subject to repayment to the Department as liabilities. Pursuant to 34 C.F.R § 668.26(d), the Department applied the same method of identifying Title IV repayment liabilities in this finding as it did for Finding 1, using the period of ineligible participation just described. Any duplication between liabilities established for Finding 1 and liabilities established for Finding 2 is taken into consideration in this FPRD so that AHA is not repaying the same disbursements twice.

In applying the criteria, the Department identified 1,051 students who had received Pell Grant disbursements in the amount of \$2,572,199 and Title IV loan disbursements in the amount of \$5,636,494 to be within the scope of liabilities to be established. Again, as noted in Finding 1, full principal amounts of loans will not require repayment as the Department will establish, as liabilities, the estimated loss to the government on these loans. A spreadsheet detailing the disbursements may be found at Appendix E.

The actual amount of liabilities established will be summarized in Section D of this FPRD.

### **Finding 3. AHA Did Not Comply With the Return to Title IV Provisions**

***Citation Summary:** When a student withdraws from an institution during a payment period or period of enrollment, an institution must treat Title IV, HEA funds in accordance with the Return to Title IV provisions described in 34 C.F.R. § 668.22.*

*In the case of a student who withdraws without providing notification, the date of the institution's determination that the student withdrew is the date that the institution becomes aware that the student ceased attendance. See 34 C.F.R. § 668.22(l)(3)(ii). Except in unusual circumstances, the date of the institution's determination that the student withdrew should be no later than 14 days after the student's last date of attendance as determined by the institution from its attendance records. See Dear Colleague Letter GEN 04-03 Revised, November 17, 2004.*

*An institution that measures progress in non-term credit hours using modules must structure the first payment period to coincide with the amount of time it takes a student to successfully complete half of the number of credit hours in the academic year and half of the number of weeks of instructional time in the academic year or half of the number of credit hours and weeks of the academic program, whichever is shorter. The second payment period is the period of time in which the student successfully completes the academic year or the program, whichever is shorter. See 34 C.F.R. § 668.4(c)(1). In the case of an institution that structures its academic year through a series of modules, it must use the last day of the module in which the student would normally have completed the program in calculating the last day of the second payment period for Return of Title IV (R2T4) purposes.*

*If a student withdraws without an approved leave of absence (LOA), an institution must perform an R2T4 calculation. If the student subsequently returns to the same program within 180 days, the student remains in the same payment period when he or she returns. See 34 C.F.R. § 668.4(f). The institution may re-disburse previously returned funds, but if the student subsequently withdraws, the institution must again perform an R2T4 calculation, taking into consideration a new payment period end date, as described above.*

**Noncompliance Summary:** *The Department finds that AHA did not properly treat Title IV funds for 16 students in the program review sample who withdrew during a payment period. The PRR identified calculations for nine students where AHA returned less Title IV funds than it was required to under the regulations. The calculations pertained to Students 4, 10, 11, 16, 22, 23, 25, 29 and 30.*

**Required Action Summary:** *Due to the systemic nature of this finding, AHA was directed to review the files of all students who withdrew during the 2007-08 and 2008-09 award years, in order to determine if the R2T4 calculations performed for the students were accurate and resulted in accurate returns to the students and the Title IV programs. AHA was required to compile the results of its file review in an Excel spreadsheet containing the following information for each student:*

1. *Student Name: Last Name and First Name;*
2. *Last four digits of the student's Social Security Number;*
3. *Student's Program Of Study;*
4. *Payment Period start and end date used in the R2T4 calculation;*
5. *Last Date of Attendance (LDA);*
6. *Date of Determination;*
7. *Title IV disbursed for payment period of withdrawal, listed by Title IV Program;*
8. *R2T4 originally calculated*
9. *R2T4 as Corrected; and*
10. *Additional Amount Due (if any), by Title IV program.*

*AHA was also required to provide, for each student, hard copies of both the original and updated R2T4 calculations, enrollment contract, the student account card, student attendance records, and academic transcript.*

*In the case of Student 7, AHA was required to provide the student's re-enrollment agreement to substantiate its original R2T4 calculation. In the case of Student 20, AHA was required to submit an updated academic transcript and documentation to demonstrate the student's participation in an externship activity.*

*For each adjustment identified in the PRR and by AHA in its reconstruction, AHA was required to provide evidence of the appropriate change to payment data in the COD system for the Pell and Direct Loan programs.*

*Finally, AHA was required to prepare and implement written policies and procedures to assure that R2T4 calculations are properly and timely calculated. A copy of these policies and procedures were to be provided in response to the PRR. AHA's auditor was required to comment on the implementation and effectiveness of such policies and procedures in AHA's next scheduled Compliance Audit.*

**AHA's Response:** AHA provided all the information requested in the PRR, except that it did not obtain an auditor's comment on the effectiveness of its newly implemented policies and procedures in the annual compliance audit following the report (for its fiscal year ended December 31, 2009).

With respect to the required reconstruction of its R2T4 calculations during the subject award years of the program review, AHA provided a spreadsheet entitled *Withdrawal Calculation Review Results*, dated April 23, 2009 (R2T4 Reconstruction Worksheet). It provides details for 378 students who withdrew during the subject award years of the review, including:

- Amounts AHA originally determined to be due to each Title IV program on behalf of each student who withdrew during a payment period;
- The amounts it had returned to each program as a result of the original calculations;
- The results of its reconstructed R2T4 calculations, as required by the PRR; and,
- The amounts it determined to have underpaid (overpaid) to the Title IV programs following its R2T4 reconstruction.

AHA provided additional information for those students who withdrew, re-enrolled, and withdrew a second time.

AHA determined that it made insufficient returns in the amount of \$212,667.62 for students who withdrew a first time, and \$31,595.90 for students who withdrew a second time during a payment period, for a total amount of \$244,263.52 to be returned to the Title IV programs. The worksheet labels this amount as a "gross liability."

AHA also determined that it returned too much Title IV funds on behalf of 90 students who withdrew for a total of \$55,662.82. AHA offset this amount to determine its "net liability" to the Title IV programs in the amount of \$188,600.70. However, the Department does not offset refunds due with excess amounts of refunds since an institution is not prohibited from returning a larger amount of funds for a student than is required under the R2T4 requirements, and cannot rescind those payments later. Therefore, as discussed below, the established liability is in the amount of \$244,263.52.

**Final Determination:** The Department reviewed the R2T4 Reconstruction Workbook. For the purpose of determining liabilities associated with AHA's reconstruction, the Department treats the claimed overpayments as a liability of \$0 and not an offset to the amounts due on behalf of students for whom it determined it must return additional funds.

The total liabilities resulting from this finding are:

Pell Grants:	\$ 57,651.81
FFEL-Sub Loans:	67,856.13
FFEL-Unsub Loans:	110,914.55
FFEL-PLUS Loans:	7,841.03
<b>Total</b>	<b>244,263.52</b>

The Worksheet identifying these liabilities is attached at **Appendix F**.

### **Finding 10. Liability for Loans Discharged Due to Institution's Closure**

**Citation Summary:** 34 C.F.R. § 685.214(a)(1) states: "The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed...."

34 C.F.R. § 685.214(e) states: "(1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party. (2) The provisions of this section apply notwithstanding any provision of state law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights. (3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan."

Section 437(c)(1) of the Higher Education Act states: "If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility to borrow under this part was falsely certified by the eligible institution, or if the institution failed to make a refund of loan proceeds which the institution owed to such student's lender, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals ... ."

**Noncompliance Summary:** AHA ceased providing instruction and closed on

*June 24, 2011. Upon closure, AHA did make arrangements for a teach-out for its students – with Milan Institute, who subsequently took over the location as one of Milan's additional locations. However, not all students availed themselves of the teach-out opportunity. Subsequently, 7 students filed applications for, and received approval of, the discharge of Subsidized, Unsubsidized and PLUS Direct Loans, each student certifying that he or she was unable to complete his or her program of study due to the closure of AHA.*

*The direct cost to the Department for the closed school loan discharges is \$35,712, an amount that AHA must return to the Department. AHA is further liable for the imputed interest on the cost of the discharge amounts paid by the Department.*

**AHA's Response Summary:** This finding was not included in the PRR since the institution was not closed at the time of issuance of the report. Therefore, AHA has not responded to the closed school discharge finding but was given written notice of the requirement for the institution to provide a close out audit.

**Final Determination:** AHA is liable for the \$35,712 paid to discharge loans for students who were unable to complete their programs of study due to AHA's closure. Appendix G sets forth the identity of the borrowers whose loans were discharged, identification of the loans discharged, and the total amounts paid by the Secretary for the discharge of each loan.

Instructions for payment are set forth in the Payment Instructions section of this FPRD.

#### **Finding 11. Unreconciled Direct Loan Funds**

**Citation Summary:** *By entering into a program participation agreement, an institution agrees that, among other things*

*(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program, and*

*(2) As a fiduciary responsible for administering federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs. 34 C.F.R. § 668.14(b)*

*Under the advance payment method—*

*(1) An institution submits a request for funds to the Secretary. The institution's request for funds may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;*

*(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to a bank account designated by the institution; and*

*(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds. 34 C.F.R. § 668.162 (b)*

**Noncompliance Summary:** *AHA failed to reconcile it's Direct Loan funds for the 2010-11 award year, resulting in excess cash on hand of \$55,992 for award number P268K114764. This is the amount of funds drawn down via G5 for the 2010-11 award year in DL funding for which there are no concomitant records in COD.*

**AHA's Response Summary:** This finding was not included in the PRR since the institution was not closed at the time of issuance of the report since the 2010-11 award year had not begun at issuance of the PRR. Therefore, AHA has not responded to this finding but was given written notice of the requirement for the institution to provide a close out audit where this reconciliation could have been provided.

**Final Determination:** AHA is liable for the unreconciled federal cash drawn down by the institution, for which no student records have been submitted via COD. The amount of the liability due to the Department is \$55,992.

#### **D. Summary of Liabilities**

The total amount of liabilities from the findings in the program review are included in the following two charts.

##### **Chart 1**

This chart contains liability amounts derived from ineligible Title IV disbursements attributable to all findings. The liabilities include some duplicate disbursement values; the duplicate amounts have been removed in the second chart.

Liabilities identified in this chart for Finding 3 represent Returns to be made to the Title IV programs identified by AHA in its reconstruction. This chart includes total principal amounts of student loans but not estimated loss on these loans or interest that must be repaid to the Department (these are shown in Chart 2). The principal amounts of loans that are not to be repaid (i.e. where Estimated Actual Loss is calculated) are removed in Chart 2.

## **Chart 2**

This chart identifies the liabilities established by the Department as a result of its final determinations as to the findings of non-compliance from the program review. The chart removes those liabilities that are duplicated.

**Title IV loan liabilities for Findings 1 and 2:** In lieu of requiring the institution to assume the risk of default by purchasing the ineligible loans from the holder, the Department has asserted a liability not for the loan amount, but rather for the estimated actual or potential loss that the government may incur with respect to the ineligible loan or loan amount. Therefore, the Title IV loan liabilities were determined by applying an estimated actual loss to the Department that has resulted, or will result, from the disbursements of loan proceeds during the period of AHA's ineligible participation. The estimation is based on the cohort default rates of AHA borrowers entering repayment in periods that most closely coincide with the subject award years of the program review (Cohort Years 2007 and 2008). Worksheets documenting the estimated actual loss calculations by award year are attached at **Appendix H**. A detailed description of the estimated actual loss formula is provided under **Appendix H**.

**Pell Grant liabilities for Findings 1 and 2** include the amount of the Pell Grant funds disbursed during the period of AHA's ineligible participation as well as the interest costs associated with the ineligible disbursements. The amount of interest costs were determined by calculating the number of days between the last date of the applicable award period and the date of release of the PRR by the Department. Worksheets documenting the associated cost of funds are attached at **Appendix I**.

**All Title IV liabilities for Finding 3** include the amount of returns owed to the Title IV programs as a result of this finding.

**Chart 1: Liabilities by Finding** - Including Duplicate Liabilities (does not include interest). Includes principal amounts of loans but not Estimated Actual Loss, which are included in the next table as Established Liabilities.

	Finding 1	Finding 2	Finding 3	Finding 10	Finding 11	Total by Title IV Program
<b>Pell Grant</b>	\$1,346,985.00	\$2,572,199.00	\$57,651.81			<b>\$3,976,835.81</b>
<b>Direct Sub Loan</b>	\$1,212,320.00	\$2,051,992.00	\$0.00			<b>\$3,264,312.00</b>
<b>Direct Unsub Loan</b>	\$1,746,720.00	\$3,052,457.00	\$0.00			<b>\$4,799,177.00</b>
<b>Direct PLUS Loan</b>	\$214,342.00	\$390,920.00	\$0.00			<b>\$605,262.00</b>
<b>FFEL Sub Loan</b>	\$1,479,558.00	\$63,000.00	\$67,856.13			<b>\$1,610,414.13</b>
<b>FFEL Unsub Loan</b>	\$1,709,990.00	\$75,500.00	\$110,914.55			<b>\$1,896,404.55</b>
<b>FFEL PLUS Loan</b>	\$107,742.00	\$2,625.00	\$7,841.03			<b>\$118,208.03</b>
<b>Closed School Discharges</b>				\$35,712.00		<b>\$35,712.00</b>
<b>Direct Loan Cash on Hand</b>					\$55,992.00	<b>\$55,992.00</b>
<b>Total by Finding</b>	<b>\$7,817,657.00</b>	<b>\$8,208,693.00</b>	<b>\$244,263.52</b>	<b>\$35,712.00</b>	<b>\$55,992.00</b>	<b>\$16,362,317.52</b>

**Chart 2: Established Liabilities – Duplicate Liabilities Removed**

<b>Liabilities</b>	Pell	DL / FFEL	EALF DL	EALF FFEL	
Finding 1	\$1,346,985.00	*			
Finding 2	1,227,256.00	*			
Finding 3	57,651.81	186,611.71			
Finding 10		35,712.00			
Finding 11		55,992.00			
<b>Subtotal</b>	\$2,631,892.81	\$278,315.71	\$60,108.72	\$8,764.61	
Interest/SA	\$4,760.47				
Excess Cash					
ACA					
<b>Subtotal</b>	\$4,760.47	\$0			
<b>TOTAL</b>	\$2,636,653.28	\$278,315.71	\$60,108.72	\$8,764.61	
<b>Payable To:</b>					<b>Totals</b>
Department	\$2,636,653.28	\$91,704.00	\$60,108.72	\$8,764.61	\$2,797,230.61
Students					
Lenders		\$186,611.71			\$186,611.71
Inst Accounts					

\* Estimated actual loss (EAL) is calculated on principal amounts of loans. The principal does not need to be repaid by AHA for Findings 1 and 2.

**Revised Liabilities (after taking into account funds on hand and other debts)**

Currently, the Department is holding Letter of Credit funds and additional funds provided by Milan Institute as a result of its Teach-Out Agreement with AHA. These funds are being held in escrow pending determination of liabilities and in order to fund some of these liabilities. These funds include:

Letter of Credit	\$1,625,000.00
Milan Institute	<u>500,000.00</u>
Total	\$2,125,000.00

In addition, AHA has other debts currently owed to the Department, as follows:

ED Note 2006020	\$1,493,957.70
ACN 09-2010-21451	96,177.00
ACN 09-2011-21451	71,003.00
Total	\$1,661,137.00

Two of these debts are from compliance audits conducted for the 2010 and 2011 fiscal years. The Department will use the Letter of Credit and other funds noted above to cover the balance of these other debts totaling \$1,661,137.00. The remaining \$463,863.00 will be used to cover current program review liabilities owed to the Department. **This will leave a new balance due to the Department of \$2,333,367.61.**

#### **E. Payment Instructions**

The total liability owed of \$2,333,367.61 must be paid according to the payment instructions provided in sections 1 through 3 below.

##### **1. Liability of \$100,000 or More Owed to the Department**

AHA owes to the Department **\$2,333,367.61**. This liability must be paid using an electronic transfer of funds through the Treasury Financial Communications System, which is known as FEDWIRE. AHA must make this transfer within **45 days of the date of this letter**. This repayment through FEDWIRE is made via the Federal Reserve Bank in New York. If AHA's bank does not maintain an account at the Federal Reserve Bank, it must use the services of a correspondent bank when making the payments through FEDWIRE.

Any liability of \$100,000 or more identified through a program review must be repaid to the Department via FEDWIRE. The Department is unable to accept any other method of payment in satisfaction of these liabilities. ***Payment and/or adjustments made via G5 will not be accepted as payment of this liability.***

Instructions for completing the electronic fund transfer message format are included on the attached FEDWIRE form (see Appendix J).

#### **Terms of Payment**

As a result of this final determination, the Department has created a receivable for this liability and payment must be received by the Department within 45 days of the date of this letter. If payment is not received through FEDWIRE within the 45-day period, interest will accrue in monthly increments from the date of this determination, on the amounts owed to the Department, at the current value of funds rate in effect as

established by the Treasury Department, until the date of receipt of the payment. AHA is also responsible for repaying any interest that accrues. If you have any questions regarding interest accruals or payment credits, contact the Department's Accounts Receivable Group at (202) 245-8080 and ask to speak to AHA's account representative.

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

U.S. Department of Education  
OCFO Financial Management Operations  
Accounts Receivable Group  
550 12<sup>th</sup> Street, SW, Room 6114  
Washington, DC 20202-4461

If within forty-five days of the date of this letter, AHA has neither made payment in accordance with these instructions nor entered into an arrangement to repay the liability under terms satisfactory to the Department, the Department intends to collect the amount due and payable by administrative offset against payments due to AHA from the federal government. **AHA may object to the collection by offset only by challenging the existence or amount of the debt.**

To challenge this debt, AHA must **timely appeal** this determination under the procedures described in the "Appeal Procedures" section of the cover letter. The Department will use those procedures to consider any objection to offset. **No separate appeal opportunity will be provided.** If a timely appeal is filed, the Department will defer offset until completion of the appeal, unless the Department determines that offset is necessary as provided in 34 C.F.R. § 30.28. This debt may also be referred to the Department of the Treasury for further action as authorized by the Debt Collection Improvement Act of 1996.

## 2. DL Excess Cash - Payment Instructions

Finding: 11

Direct Loan – Excess Cash		
Amount	Title IV Program	Award Year
\$55,992	Direct Loan Program	2010-2011

Upon issuance of this FPRD, AHA has an existing Direct Loan excess cash/unsubstantiated Direct Loan cash balance and must repay the amount reflected

above. Payment will be applied to the applicable G5 award. This amount is also reflected in the total amount owed to the Department in Section 1 above.

### 3. Liabilities Owed to FFEL Lenders

Finding: 3  
Appendix: F

FFEL		
Amount (Principle)	Amount (Interest)	Award Year
\$186,611.71	\$0	2007-08 2008-09

AHA must pay the amount above to the holder(s) of the FFEL loans on behalf of the students identified in the Appendix listed above, plus any interest that has accrued since the date of this letter and the day the school pays the holder. This Appendix lists each of the applicable students and the corresponding amount owed to the student's FFEL loan, except for the interest that continues to accrue. AHA must access NSLDS to determine if the FFEL loans have been purchased and/or are serviced by the Department. See Chapter 4, Volume 4 (Returning funds from FFEL loans purchased/serviced by the Department) of the Federal Student Aid Handbook for additional guidance. As proof of payment, a copy of the front and back of the canceled checks, or proof of electronic transfer of the funds, must be provided to Gayle Palumbo **within 45 days of the date of this letter.**

### F. Appendices

Appendices A – J are attached to this report.