



June 5, 2015

Mr. David W. Pershing
President
University of Utah
201 South 1460 East, Room 105
Salt Lake City UT 84112-9055

Certified Mail Return Receipt Requested
Domestic Return Receipt
7012 1640 0000 0216 6448

RE: Final Program Review Determination
OPE ID: 003675
PRCN: 2014-05-28558

Dear Dr. Pershing:

The U.S. Department of Education's (Department's) Chicago/Denver School Participation Team issued a program review report on July 28, 2014 covering the University of Utah's (Utah) administration of 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 2012-2013 and 2013-2014 award years. Utah's response was received on August 30, 2014. Utah failed to address adequately one of the six findings, as detailed in the attached report. A copy of the program review report (and related attachments) and the institution's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by Utah upon request. The Department has made final determinations based on information obtained during the program review and from documentation already submitted by Utah. 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.

Federal Student Aid

AN OFFICE OF THE U.S. DEPARTMENT OF EDUCATION

Federal Student Aid, Chicago/Denver Participation Division
500 West Madison Street, Suite 1576, Chicago, IL 60661
www.FederalStudentAid.ed.gov

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, (3) notify the institution of its right to appeal, (4) and notify Utah of a possible adverse action. Due to the serious nature of one or more of the enclosed findings, this FPRD is being referred to the Department's Administrative Actions and Appeals Service Group (AAASG) for its consideration of possible adverse action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the institution. Such action may also include the revocation of the institution's program participation agreement (if provisional), or, if the institution has an application pending for renewal of its certification, denial of that application. If AAASG initiates any action, a separate notification will be provided which will include information on institutional appeal rights and procedures to file an appeal.

This FPRD contains one or more findings regarding Utah's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46. Since a Clery Act finding does not result in a financial liability, such a finding may not be appealed.

Liabilities totaling \$120,135.00 have been repaid by Utah. No further action is required.

Protection of Personally Identifiable Information (PII):

PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth). The loss of PII can result in substantial harm, embarrassment, and inconvenience to individuals and may lead to identity theft or other fraudulent use of the information. To protect PII, the findings in the attached report do not contain any student PII. Instead, each finding references students only by a student number created by Federal Student Aid. The student numbers were assigned in Appendix A, Student Sample. In addition, Appendix B also contains PII. These appendices were encrypted and sent separately to the institution via e-mail.

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).

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The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Susan Frost Alvarez at (312)730-1694. Questions relating to any appeal of the FPRD should be directed to the address noted in the Appeal Procedures section of this letter.

Sincerely,

A large black rectangular redaction box covering the signature of Douglas Parrott.

Douglas Parrott
Division Director

Enclosure:

Protection of Personally Identifiable Information
Program Review Report (and appendices)
Final Program Review Determination Report (and appendices)

cc: Mr. John Curl, Director of Financial Aid and Scholarships
UT Utah State Board of Regents
Northwest Commission on Colleges and Universities
American Bar Association
American Dietetic Association
National Association of Schools of Dance
National Association of Schools of Music
Department of Defense
Department of Veterans Affairs
Consumer Financial Protection Bureau

Prepared for
University of Utah

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

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OPE ID: 003675
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Prepared by
U.S. Department of Education
Federal Student Aid
Chicago/Denver School Participation Division

Final Program Review Determination

June 5, 2015

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A. Institutional Information

University of Utah
201 South 1460 East, Room 105
Salt Lake City UT 84112-9055

Type: Public

Highest Level of Offering: Master's Degree or Doctor's Degree

Accrediting Agency: Utah State Board of Regents
Northwest Commission on Colleges and Universities
American Bar Association
American Dietetic Association
National Association of Schools of Dance
National Association of Schools of Music

Current Student Enrollment: 32,388 (2012-2013)

% of Students Receiving Title IV: 64% (2012-2013)

Title IV Participation: 2012-2013 Award Year

Pell Grant	\$ 32,797,810
Perkins Loan Program (Perkins)	\$ 4,062,492
Federal Student Educational Opportunity Grant (SEOG)	\$ 1,060,578
Federal Work Study Program (FWS)	\$ 1,360,896
William D. Ford Federal Direct Loan Program (Direct Loan)	\$ 127,255,586

Default Rate FFEL/DL:	2011 2.8%
	2010 2.8%
	2009 1.4%

Default Rate Perkins:	2013 2.1%
	2012 1.9%
	2011 2.1%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at University of Utah (Utah) from March 24 through March 27, 2014. The review was conducted by Susan Frost Alvarez and Herschel Wallace.

The focus of the review was to determine Utah's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. The review consisted of, but was not limited to, an examination of Utah's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 30 files was identified for review from the 2012-2013 and 2013-2014 (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. Appendix A lists the names and partial social security numbers of the students whose files were examined during the program review.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Utah'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 Utah 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

Utah has taken the corrective actions necessary to resolve findings Finding 1. Bank Accounts - Federal Accounts Not Identified and Finding 4. Verification Violation of the program review report. Therefore, these findings may be considered closed. Appendix C contains the institution's written response related to the resolved findings. Findings requiring further action by Utah are discussed below.

Resolved Findings with Comments

The following program review finding has been resolved by the institution, and may be considered closed. These findings are included solely for the purpose of discussing resolution of the finding.

Finding 3. Advances Used for Non-Program Purposes – Late Fees Charged To Students Using Title IV Aid

Citation Summary:

As outlined in Section 34 C.F.R. §.668.14(b)(3) of the Student Assistance General Provisions, by entering into a participation agreement with the Department, the institution agrees that it will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance. Additionally, Section 34 C.F.R. §668.14(b)(21) states that the institution agrees that it will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution.

Noncompliance Summary:

Late fees were improperly charged to students #10, #23 and #29. Direct institutional charges were fully covered by Title IV aid for these students, but their Title IV aid had not been processed by the tuition due date. Utah's tuition payment policies impose late fees on students whose financial aid is not processed by the tuition due date for each term:

Required Action Summary:

In order to determine the extent to which Title IV recipients were affected by improper late fees, Utah proactively conducted a file review to identify all Title IV aid recipients for the 2013-2014 award year who were charged late payment fees.

<u>Term</u>	<u>Number of Students Charged Late Fees</u>	<u>Amount Charged</u>
Fall 2013	1,249	\$ 66,384.00
Spring 2014	1,052	\$ 53,751.00
Total	2,301	\$120,135.00

Utah reversed the late fees from the student accounts, and provided documentation that \$120,135.00 in late fees were refunded to students included in the file review. The Department tested a random statistical sample of 50 students identified in the file review to verify that Utah correctly identified late fees, and reversed the charges. No errors were found in Utah's file review and reversal of late fees.

The institution must submit to this office a copy of its revised late fee policies. The institution is directed to remove any reference to a late payment fee from all its institutional publications for Title IV recipients whose aid is not processed by the tuition due date.

Utah's Response Summary:

Utah has revised its late fee policies to noted that no late fees will be assessed on tuition accounts for students who have applied for Title IV funds and have filed a valid FAFSA by the tuition due date. Utah provided copied of its revised policies in Appendix C of its response. In addition, Utah provided documentation that it has revised the late fee assessment rule in all applicable areas of the institution's website. The institution has revised its procedures to monitor all Title IV recipients to ensure that they are not charges a system-generated late fee.

Final Determination:

The institution is directed to review the above-cited regulation to ensure strict compliance with the requirements thereof. The institution must strictly enforce procedures to ensure that this finding does not recur.

Utah has prepaid \$120,135.00 in total liabilities associated with this finding. Student-specific detail associated with this liability is provided in Appendix B.

Findings with Final Determinations

The program review report finding requiring further action is summarized below. At the conclusion of each finding is a summary of Utah's response to the finding, and the Department's final determination for that finding. A copy of the program review report issued on July 28, 2014 is attached as Appendix D.

Finding 2. Title IV, HEA Program Funds Not Maintained In An Interest Bearing Account

Citation Summary:

As stated in Section 34 C.F.R. §668.163 of the Student Assistance General Provisions, except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

An institution does not have to maintain Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—

- *The institution drew down less than a total of \$3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;*
- *The institution demonstrates by its cash management practices that it will not earn over \$250 on those funds during the award year; or*
- *The institution requests those funds from the Secretary under the just-in-time payment method.*

If an institution maintains Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest bearing or investment account, the institution may keep the initial \$250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.

An institution must maintain accounting and internal control systems that—

- *Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and*
- *Identify the earnings on Title IV, HEA program funds maintained in the institution's bank or investment account.*

An institution must maintain its financial records in accordance with the provisions under Section 34 C.F.R. §668.24.

Noncompliance Summary:

Utah failed to maintain TIV funds in an interest bearing account. Specifically, Utah drew down more than \$3 million in funds for the following award years:

*2012-2013: \$166,537,362
2011-2012: \$172,672,289
2010-2011: \$161,933,380*

Utah draws down more than \$3 million annually in Title IV, HEA program funds. The institution has not demonstrated by its cash management practices that it would not earn less than \$250 in interest on Title IV, HEA program funds during an award year. Utah is required to maintain Title IV, HEA program funds in an interest bearing bank or investment account. Utah's failure to maintain these funds in an interest bearing bank or investment account has resulted in a loss of interest earnings to the Department.

Summary of Required Action:

The institution must submit to this office documentation that its bank account containing Title IV, HEA program funds now identifies that Title IV, HEA program funds are maintained in an interest bearing bank or investment account.

School's Response Summary:

Utah's response contained an explanation which stated:

"All Title IV, HEA program funds that are sent to the University of Utah are to be deposited into the Federal Funds ACH Depository Account. At the end of each processing day, the funds are 'swept' to the 'U of U Main Account' and participates with all other funds in providing for a compensating earnings credit."

Final Determination:

The institution has not demonstrated by its cash management practices that it would not earn less than \$250 in interest on Title IV, HEA program funds during an award year.

The institution must submit to this office documentation that its bank account containing Title IV, HEA program funds now identifies that Title IV, HEA program funds are maintained in an interest bearing bank or investment account.

Finding 5. Failure to Comply with Drug and Alcohol Abuse Prevention Program Requirements

Citation Summary:

The Department's regulations and the Drug Free Schools and Campus Act require participating institutions of higher education to conduct a biennial review of its program to (1) determine its effectiveness and implement changes to the program if they are needed; and (2) ensure that the disciplinary sanctions described in paragraph (a)(5) of this section are consistently enforced. 34 C.F.R. §86.100(b)(1)(2). In addition, an institution's drug prevention program must include an annual distribution in writing to each employee and to each student who is taking one or more classes for any type of academic credit. 34 C.F.R. §86.100(a).

Noncompliance Summary:

Utah violated multiple requirements of the DFSCA. Specifically, the school failed to prepare and publish an accurate and complete annual DAAPP disclosure to students and employees as required for 2012 and 2013. Utah published a compliant Biennial Review for 2010-2011 and 2012-13, but has not published a materially complete annual DAAPP disclosure. Utah's Biennial Review demonstrates that the institution has an effective DAAPP but the institution did not comply with the annual written DAAPP disclosure requirements.

Required Action Summary:

Utah is required to take all necessary corrective actions to resolve these violations and to ensure that they do not recur. At a minimum, Utah must perform the following:

- *Review and revise its existing drug and alcohol program materials and develop new program content as needed to ensure that a comprehensive DAAPP that includes all of the required elements found in the DFSCA is in place;*
- *Publish a materially-complete annual DAAPP disclosure that summarizes the program;*
- *Develop detailed policies and procedures that will ensure that the DAAPP disclosure is distributed annually to every student who enrolls for any academic credit and to all employees. This policy must provide for active delivery to every member of the campus community regardless of when they enroll or are hired, and irrespective of the duration of enrollment/employment. A copy of Utah's new DAAPP and new distribution policy must accompany with its response to this program review report.*
- *Distribute the new DAAPP disclosure and provide documentation evidencing the distribution as well as a statement of certification attesting to the fact that the materials were distributed in accordance with the DFSCA. This certification must also affirm that*

the institution understands all of its DFSCA obligations and that it has taken all necessary corrective actions to ensure that these violations do not recur;

Summary of Utah's Response:

In its official response, Utah concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, Utah acknowledged that it failed to publish an annual DAAPP disclosure. Per the response, the University took the following actions to address the identified discrepancies:

- Utah has revised its existing DAAPP to ensure that it contains all of the required elements of the *DFSCA*;
- Utah produced a DAAPP disclosure and distributed it for the first time on August 29, 2014; and,
- Utah revised its policies and procedures to ensure that the DAAPP disclosure is distributed annually to every student and to all employees.

The University also submitted documentations in support of its claims of remedial action. These documents include a copy of its new program materials, proof of distribution, and its new and revised internal policies and procedures.

Final Determination:

Finding #5 of the program review report cited Utah for its failure to publish an annual DAAPP disclosure as well as the resultant failure to actively distribute required program materials to enrolled students and current employees. During the review, Department officials learned that no program materials were produced or distributed in 2012 and 2013, the years covered by this program review. Although the finding only covers those two years, the review team's analysis indicated that the violation had likely persisted for several years.

As a result of these violations, Utah was required to review and revise its DAAPP and related policies and procedures. The University was also required to produce a DAAPP disclosure document that summarized its program. Then, Utah was required to actively distribute its new program materials to all mandatory recipients and to document its distribution efforts. In its response, Utah concurred with the finding, described its remedial actions, and submitted documents in support of its claims.

The Department carefully examined Utah's narrative response and supporting documentation. Based on the Department's review and Utah's admission of noncompliance, each of the violations identified in the initial finding are sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the

University's response, its enhanced DAAPP, new annual disclosure, evidence of distribution, and new internal policies and procedures. As such, the Department determined that the University's remedial action plan meets minimum requirements¹. For these reasons, the Department has accepted the response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of Utah are put on notice that the University must take any additional actions that may be necessary to address the deficiencies identified by the Department as well as any other deficiencies and weaknesses that were detected during the preparation of the University's response, and/or as may otherwise be needed to ensure that these violations do not recur.

In this regard, Utah officials are advised that the University must continue to develop its DAAPP, ensure that it continues to actively distribute accurate and complete program materials to every member of the campus community each year, and ensures that substantive biennial reviews are conducted on the required schedule and that each report includes detailed information about the conduct of the review such as the research methods used and outcomes reached. Care must also be taken to ensure that all findings and recommendations are supported by valid evidence. Finally, each report must indicate that it was approved by the University's President and/or its board.

Although this finding is now closed, Utah is reminded that the exceptions identified above constitute serious and persistent violations of the *DFSCA* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. Utah asserted that it has taken adequate remedial actions and is now in compliance with the *DFSCA* as required by its Program Participation Agreement (PPA). Nevertheless, Utah officials must understand that compliance with the *DFSCA* is essential to maintaining a safe and healthy learning environment. Data compiled by the Department shows that the use of illicit drugs and alcohol abuse is highly correlated to increased incidents of violent crime on campus. *DFSCA* violations deprive students and employees of important information regarding the educational, financial, health, and legal consequences of alcohol abuse and illicit drug use and further deprive institutions of important information about the effectiveness of any drug and alcohol programs that may have been in place during the review period. For these reasons, Utah is advised that its remedial measures cannot and do not diminish the seriousness of these violations nor do these actions eliminate the possibility that the Department will impose an adverse administrative action and/or additional remedial measures as a result.

In light of the serious consequences associated with compliance failures of this type, the Department strongly recommends that Utah re-examine its drug and alcohol and general Title IV policies, procedures, and programs on at least an annual basis and revise them as needed to ensure that they continue to reflect current institutional policy and are in full compliance with the Federal regulations. Please be advised that the Department may request information on a periodic basis to test the effectiveness of the institution's new policies and procedures.

¹Although the Department has accepted Utah's response including its corrective action plan, the University is advised that its biennial review plan must include a mechanism for identifying deficiencies and weaknesses in its drug and alcohol programming.

Finding 6. Crime Awareness Requirements Not Met

Citation Summary:

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Department's regulations require that all institutions that receive Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees a comprehensive Annual Security Report (ASR) that contains, at a minimum, all of the statistical and policy elements described in 34 C.F.R. §668.46(b).

The ASR must be prepared and actively distributed as a single document. Acceptable means of delivery include U.S. Mail, hand delivery, or campus mail distribution to the individual or posting on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. 34 C.F.R. §668.41(e)(1). The Department's regulations also require participating institutions to provide a notice to all prospective students and employees that includes a statement about the ASR's availability, its contents, and its exact electronic address if posted to a website. This notice must also advise interested parties of their right to request a paper copy of the ASR and to have it furnished upon request. 34 C.F.R. §668.41(e)(4)

Institutions are also required to include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Statistics for certain hates crimes as well as arrest and disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published for the following geographical categories: 1) on campus; 2) on-campus student residential facilities; 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property. 34 C.F.R. §668.46(c)(1).

Finally, each institution must also submit its crime statistics to the Department for inclusion in the "Campus Safety and Security Data Analysis Cutting Tool." 34 C.F.R. §668.41(e)(5).

Noncompliance Summary:

Utah submitted campus crime statistics to the Department's "Campus Safety and Security Data Analysis Cutting Tool (CSSDACT)" that did not match those that were published in the University's 2011 ASR. An institution must report the same crime data to the Department as it publishes in the ASR. Specifically, Utah properly disclosed one incident of a hate crime for calendar year 2012, two instances for 2011, and one instance for 2010 in the ASR; however, Utah failed to identify the proper crime classification of these incidents, as required in the 2013

ASR. This error appears to be an oversight. All hate crimes were correctly reported by category in the 2012 ASR.

The institution did distribute an ASR to students when they initially enrolled at Utah and to employees when those employees were initially hired, but the institution does not maintain a system for providing the ASR to students who start in the Spring and Summer terms. The institution also did not provide its drug and alcohol abuse prevention plan (DAAPP) to students and employees annually.

Required Action Summary:

As a result of this violation, Utah is required to review and improve its existing internal policies, procedures, internal controls, and training programs to ensure that all crime statistics are disclosed accurately and completely, both in its ASR and in its data submission to the Department's CSSDACT. In addition, the University must develop and implement any new policies and procedures that are needed to ensure that all of the University's campus security operations will be carried out in accordance with the Clery Act going forward. As part of this review, Utah must review the crime statistics that were included in the 2012 ASR and its 2012 CSSDACT data submission and verify that all statistics are accurate and complete. If additional reporting errors are identified during this internal review, Utah must take immediate action to correct those data discrepancies by amending its ASR and/or its CSSDACT data submission. Finally, Utah must submit a copy of all of its new and revised policies and procedures as well as a list of any additional statistical discrepancies that were identified during the internal review with its response to this program review report.

As noted above, the Department considers all errors in an institution's crime statistics to be serious violations of the Clery Act. There is no way to truly cure a violation of this type once it occurs. Utah is now required to initiate corrective actions and bring its campus security operations into full compliance with the Clery Act as required by its Program Participation Agreement. However, the Utah is advised that these remedial measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures.

Summary of Utah's Response:

In its official response, Utah concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, the University acknowledged errors in the hate crime statistics that were included in its 2013 ASR. Per the response, Utah revised its statistics and distributed a modified 2013 ASR on August 29, 2014. In support of its remedial action claims, the University submitted a copy of its modified 2013 ASR with proof of distribution and its updated internal procedures for compiling and disclosing crime statistics.

Final Determination:

Finding #6 of the program review report cited Utah for errors in its 2011, 2012, and 2013 crime statistics. Specifically, the University included crime statistics in the 2011 ASR that did not match those that were submitted to the Department's CSSDACT. A single variance was identified in the 2010 hate crimes statistics. In addition, Utah did not properly identify the crime classification and category of bias for four hate crimes that were disclosed in the 2013 ASR. Finally, the review team cited Utah for not distributing the 2013 ASR to students that enrolled after October 1, 2013 and to employees hired after that date. As a result of these violations, Utah was required to review and revise its internal policies and procedures related to *Clery Act* compliance and develop and implement new policies and procedures to ensure that these violations do not recur. Then, in accordance with its new and revised policies and procedures, the University was required to reconcile its crime statistics to eliminate any discrepancies and make all necessary edits to its ASR and CSSDACT submission. Finally, Utah was required to distribute the revised 2013 report to required recipients. In its response, the Utah concurred with the finding, asserted that remedial action was taken, and submitted documents in support of its claims.

The Department carefully examined Utah's narrative response and supporting documentation. Based on that review and Utah's admission of noncompliance, each of the violations identified in the initial finding are sustained, with the exception of the ASR distribution element. Institutions are required to actively distribute the ASR to all persons that are currently enrolled and/or employed as the time of the distribution (on or before October 1st). In addition, all prospective students and employees must be actively notified about the availability of the ASR and provided a copy upon request; however, institutions are not required to actively disseminate the report throughout the year. In this sense, the ASR distribution rules are not as strict as the DAAPP disclosure distribution requirement of the *DFSCA*, which requires active distribution throughout the year. As noted in Finding #5, the DAAPP disclosure must be provided to any student that is enrolled for one or more academic credits and to anyone that is employed by the institution. As such, this requirement applies to students that enroll for a single summer term or for persons employed to teach a single course.

The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by Utah's modified 2013 ASR and CSSDACT data set as well as its new and revised internal policies and procedures. As such, the Department determined that the University's remedial action plan meets minimum requirements. For these reasons, the Department has accepted Utah's response and considers this finding to be closed for the purposes of this program review. Nevertheless, Utah's officers and directors are on notice that the institution must take all additional actions that may be necessary to address the violations identified above as well as any other deficiencies and weaknesses were detected during the preparation of the University's response and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed, Utah is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no

way to truly “correct” violations of this type once they occur. The requirement to compile and disclose accurate and complete campus crime statistics is fundamental to the goals of the *Clery Act*. Utah asserted that it has taken adequate remedial actions and is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

In light of the serious consequences associated with compliance failures of this type, the Department strongly recommends that Utah re-examine its overall campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal regulations. As part of these periodic reviews, Utah officials are encouraged to consult the Department’s “Handbook for Campus Safety and Security Reporting” (2011) as a reference guide for *Clery Act* compliance. The Handbook is online at: www2.ed.gov/admins/lead/safety/handbook.pdf. The Department also provides a number of other *Clery Act* training resources. Utah can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The regulations governing the *Clery Act* can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49.

Finally, Utah management is also reminded that Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures in their ASRs regarding sexual assault prevention, response, and adjudication. All institutions are currently obligated to make a documented good-faith effort to comply with the statutory requirements of VAWA and were required to include all new required content in the 2014 ASR. The Department issued Final Rules on the VAWA amendments on October 20, 2014 and therefore, these regulations will go into effect on July 1, 2015, per the Department’s Master Calendar. University officials may access the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>

D. Summary of Liabilities

The total amount calculated as liabilities from the findings in the program review determination is as follows:

Liabilities	Improper Late Fees Charged to Title IV Recipients
Finding 3	\$120,135.00
TOTAL	\$120,135.00
Payable To:	
Students	\$120,135.00

Utah has repaid all liabilities.

Appendix A: Student Sample

No.	Last Name	First Name	SSN
1.			
2.			
3.			
4.			
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25.			
26.			
27.			
28.			
29.			
30.			

Appendix C: Institution's Response to Program Review Report

Appendix D: Program Review Report

Prepared for
University of Utah

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

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OPE ID: 003675
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Prepared by
U.S. Department of Education
Federal Student Aid
Chicago/Denver School Participation Division

Program Review Report

July 28, 2014

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A. Institutional Information

University of Utah
201 South 1460 East, Room 105
Salt Lake City UT 84112-9055

Type: Public

Highest Level of Offering: Master's Degree or Doctor's Degree

Accrediting Agency: Utah State Board of Regents
Northwest Commission on Colleges and Universities
American Bar Association
American Dietetic Association
National Association of Schools of Dance
National Association of Schools of Music

Current Student Enrollment: 32,388 (2012-2013)

% of Students Receiving Title IV: 64% (2012-2013)

Title IV Participation: 2012-2013 Award Year

Pell Grant	\$	32,797,810
Perkins Loan Program (Perkins)	\$	4,062,492
Federal Student Educational Opportunity Grant (SEOG)	\$	1,060,578
Federal Work Study Program (FWS)	\$	1,360,896
William D. Ford Federal Direct Loan Program (Direct Loan)	\$	127,255,586

Default Rate FFEL/DL:	2011	2.8%
	2010	2.8%
	2009	1.4%

Default Rate Perkins:	2013	2.1%
	2012	1.9%
	2011	2.1%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at University of Utah (Utah) from March 24 through March 27, 2014. The review was conducted by Susan Frost Alvarez and Herschel Wallace.

The focus of the review was to determine Utah's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. The review consisted of, but was not limited to, an examination of Utah's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 30 files was identified for review from the 2012-2013 and 2013-2014 (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. Appendix A lists the names and partial social security numbers of the students whose files were examined during the program review.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Utah'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 Utah of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

This report reflects initial findings. These findings are not final. The Department will issue its final findings in a subsequent Final Program Review Determination letter.

C. Findings

During the review, several areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions to be taken by Utah to bring operations of the financial aid programs into compliance with the statutes and regulations.

Finding 1. Bank Accounts -Federal Accounts Not Identified

Citation:

An institution must maintain Title IV, HEA program funds in a bank or investment account that is federally insured or secured by collateral of value reasonably equivalent to the amount of those funds. For each bank or investment account that includes Title IV, HEA program funds, an institution must clearly identify that Title IV, HEA program funds are maintained in that account by (1) including in the name of each account the phrase "Federal Funds"; or (2) notifying the bank or investment company of the accounts that contain Title IV, HEA program funds and retaining a record of that notice. *34 C.F.R. § 668.163(a)(1) and (2).*

Noncompliance:

The institution's bank account containing Title IV, HEA program funds did not identify that Title IV, HEA program funds were maintained in the account.

Required Action:

The institution must submit to this office documentation that its bank account containing Title IV, HEA program funds now identifies that Title IV, HEA program funds are maintained in the account by (1) including in the name of each account the phrase "Federal Funds"; or (2) notifying the bank or investment company of the accounts that contain Title IV, HEA program funds and retaining a record of that notice.

The institution is directed to review the above-cited regulatory requirements to assure strict compliance with the requirements thereof.

Finding 2. Title IV, HEA Program Funds Not Maintained In An Interest Bearing Account

Citation:

As stated in Section 34 C.F.R. §668.163 of the Student Assistance General Provisions, except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

An institution does not have to maintain Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—

- The institution drew down less than a total of \$3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;
- The institution demonstrates by its cash management practices that it will not earn over \$250 on those funds during the award year; or
- The institution requests those funds from the Secretary under the just-in-time payment method.

If an institution maintains Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest bearing or investment account, the institution may keep the initial \$250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.

An institution must maintain accounting and internal control systems that—

- Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and
- Identify the earnings on Title IV, HEA program funds maintained in the institution's bank or investment account.

An institution must maintain its financial records in accordance with the provisions under Section 34 C.F.R. §668.24.

Noncompliance:

Utah failed to maintain TIV funds in an interest bearing account. Specifically, Utah drew down more than \$3 million in funds for the following award years:

2012-2013: \$166,537,362
2011-2012: \$172,672,289
2010-2011: \$161,933,380

Utah draws down more than \$3 million annually in Title IV, HEA program funds. The institution has not demonstrated by its cash management practices that it would not earn less than \$250 in interest on Title IV, HEA program funds during an award year. Utah is required to maintain Title IV, HEA program funds in an interest bearing bank or investment account. Utah's failure to maintain these funds in an interest bearing bank or investment account has resulted in a loss of interest earnings to the Department.

Required Action:

The institution must submit to this office documentation that its bank account containing Title IV, HEA program funds now identifies that Title IV, HEA program funds are maintained in an interest bearing bank or investment account. Utah must maintain accounting and internal control systems that—

- Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and
- Identify the earnings on title IV, HEA program funds maintained in the institution's bank or investment account.

By June 30th of each award year the institution must remit to the Department any interest earnings over \$250 for Title IV, HEA program funds maintained in the afore mentioned interest bearing account.

The institution is directed to review the above-cited regulatory requirements to assure strict compliance with the requirements thereof.

Finding 3. Advances Used for Non-Program Purposes – Late Fees Charged To Students Using Title IV Aid

Citation:

As outlined in Section 34 C.F.R. §.668.14(b)(3) of the Student Assistance General Provisions, by entering into a participation agreement with the Department, the institution agrees that it will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance. Additionally, Section 34 C.F.R. §668.14(b)(21) states that the institution agrees that it will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution.

Noncompliance:

Late fees were improperly charged to students #10, #23 and #29. Direct institutional charges were fully covered by Title IV aid for these students, but their Title IV aid had not been processed by the tuition due date. Utah's tuition payment policies impose late fees on students whose financial aid is not processed by the tuition due date for each term:

- Tuition Due Date: All Graduate and Undergraduate students are responsible for paying tuition for term length, first half, second half, and miscellaneous session classes by 4:45 p.m. (MDT) on the Tuition Due Date (see: Academic Calendar).
- Paying Tuition and Fees: You are responsible to pay tuition and fees by the Tuition Due Date (see: Academic Calendar). This includes tuition for term length, first half, second half, and miscellaneous session classes. Students who fail to pay tuition by the due date may have their classes deleted from their academic record. Students who have classes deleted due to non-payment of tuition may NOT reinstate cancelled classes or use "Late Add Forms" to add classes.
- Late Fees and Penalties: All unpaid account balances after the due date will be assessed a 20% late fee (not to exceed \$60). Late fees are charged on all accounts not paid by the contracted due date
- Students are responsible for payment of their tuition and fees by the published due date even if financial aid is delayed. All students know their financial obligations prior to the beginning of each semester. Recommended financial aid application filing dates are

listed on the website for the Office of Financial Aid & Scholarships. A change in your financial status after the semester begins is not considered “beyond your control”.

Title IV funds are disbursed to eligible recipients to assist with their educationally related costs, both direct costs (institutional charges) and indirect costs (subsistence or maintenance expenses). An improper fee applied to a financial aid recipient’s institutional account may divert a disproportional amount of the total financial aid to the institutional charges. This reduces the amount the recipient is entitled to use for his/her indirect educational expenses. This is inconsistent with the purpose of those funds.

Required Action:

In order to determine the extent to which Title IV recipients were affected by improper late fees, Utah proactively conducted a file review to identify all Title IV aid recipients for the 2013-2014 award year who were charged late payment fees.

<u>Term</u>	<u>Number of Students Charged Late Fees</u>	<u>Amount Charged</u>
Fall 2013	1,249	\$ 66,384.00
Spring 2014	1,052	\$ 53,751.00
Total	2,301	\$120,135.00

Late fees charged to Title IV recipients ranged from \$12.00-\$60.00 per student. Utah reversed the late fees from the student accounts, and provided documentation that \$120,135.00 in late fees were refunded to students included in the file review. The Department tested a random statistical sample of 50 students identified in the file review to verify that Utah correctly identified late fees, and reversed the charges. No errors were found in Utah’s file review and reversal of late fees.

The institution must submit to this office a copy of its revised late fee policies. The institution is directed to remove any reference to a late payment fee from all its institutional publications for Title IV recipients whose aid is not processed by the tuition due date.

The institution is directed to review the above-cited regulatory requirements to assure strict compliance with the requirements thereof.

Finding 4. Verification Violation

Citation

Section 34 C.F.R. §668.51 through §668.61 of the Student Assistance General Provisions regulations specify the requirements for determining a student's eligibility for Title IV, HEA funds. An institution is responsible for verifying the information that is used to calculate an applicant's Estimated Family Contribution (EFC) as part of the determination of need for student financial assistance. Information is verified by securing additional documentation, or in some cases, a signed statement attesting to the accuracy of the information provided. The regulations also require an institution to verify discrepancies in information received from different sources regarding a student's application for financial aid under the Title IV, HEA programs.

Noncompliance

Student #8 was selected for income verification, but untaxed income was not verified by Utah. For students who are selected for verification and receiving subsidized student aid, changes to any dollar item of \$25 or more must be submitted for processing. The unverified untaxed income for student #8 was \$2,000. Utah completed the verification process while the program reviewers were onsite, but it did not change the student's EFC.

Required Action

The institution's failure to complete verification may have resulted in the improper use of Title IV, HEA funds and increased expense to the Department. An institution that fails to properly complete verification fails to properly determine student eligibility for Title IV, HEA assistance. Funds disbursed to students whose eligibility is not properly determined are funds that are disbursed to ineligible students and represent an institutional liability. Failure to properly determine student eligibility indicates a lack of administrative capability on the part of the institution.

The institution is directed to review the above-cited regulatory requirements to assure strict compliance with the requirements thereof.

Finding 5. Failure to Comply with Drug and Alcohol Abuse Prevention Program Requirements

Citation:

The Drug-Free Schools and Communities Act (*DFSCA*) and Part 86 of the Department's General Administrative Regulations require each institution of higher education (IHE) to certify that it has developed and implemented a drug and alcohol abuse prevention program (DAAPP). The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, each IHE must provide the following information in writing to all current students (enrolled for any type of academic credit except for continuing education units) and all current employees:

- 1) A written statement about its standards of conduct that prohibits the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees;
- 2) A written description of legal sanctions imposed under Federal, state, and local laws and ordinances for unlawful possession or distribution of illicit drugs and alcohol;
- 3) A description of the health risks associated with the use of illicit drugs and alcohol abuse;
- 4) A description of any drug or alcohol counseling, treatment, and rehabilitation/re-entry programs that are available to students and employees; and,
- 5) A statement that the IHE will impose disciplinary sanctions on students and employees for violations of the institution's codes of conduct and a description of such sanctions.

The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll at a date after the initial distribution and for employees who are hired at different points throughout the year.

In addition, each IHE must conduct a biennial review to determine the effectiveness of its DAAPP and to ensure consistent enforcement of applicable drug and alcohol-related statutes, ordinances, and institutional policies against students and employees found to be in violation. The biennial review materials must be maintained by the IHE and made available to the Department upon request. *34 C.F.R. §§ 86.3 and 86.100.*

Noncompliance:

Utah violated multiple requirements of the DFSCA. Specifically, the school failed to prepare and publish an accurate and complete annual DAAPP disclosure to students and employees as required for 2012 and 2013. Utah published a compliant Biennial Review for 2010-2011 and 2012-13, but has not published a materially complete annual DAAPP disclosure. Utah's Biennial Review demonstrates that the institution has an effective DAAPP, but the institution did

not comply with the annual written DAAPP disclosure requirements. The following deficiencies were identified in Utah's 2009 DAAPP:

- The existing DAAPP is not compiled into a complete policy in one document. Elements of the DAAPP are included separate sections of the ASR, and in the University of Utah Student Code 6-400 (Section III: Student Behavior, Section A, subsections 7, 8, 9).
- A written description of legal sanctions imposed under Federal, state, and local laws and ordinances for unlawful possession or distribution of illicit drugs and alcohol is not included in the DAAPP.

Failure to comply with the DFSCA's DAAPP requirements deprives students and employees of important information regarding the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse. Failure to comply with the BR requirements also deprives the institution of important information about the effectiveness of its own drug and alcohol programs. Such failures may contribute to increased drug and alcohol abuse as well as an increase in drug and alcohol-related violent crime at Utah.

Required Action:

Utah is required to take all necessary corrective actions to resolve these violations and to ensure that they do not recur. At a minimum, Utah must perform the following:

- Review and revise its existing drug and alcohol program materials and develop new program content as needed to ensure that a comprehensive DAAPP that includes all of the required elements found in the *DFSCA* is in place;
- Publish a materially-complete annual DAAPP disclosure that summarizes the program;
- Develop detailed policies and procedures that will ensure that the DAAPP disclosure is distributed annually to every student who enrolls for any academic credit and to all employees. This policy must provide for active delivery to every member of the campus community regardless of when they enroll or are hired, and irrespective of the duration of enrollment/employment. A copy of Utah's new DAAPP and new distribution policy must accompany with its response to this program review report.
- Distribute the new DAAPP disclosure and provide documentation evidencing the distribution as well as a statement of certification attesting to the fact that the materials were distributed in accordance with the *DFSCA*. This certification must also affirm that the institution understands all of its *DFSCA* obligations and that it has taken all necessary corrective actions to ensure that these violations do not recur;

As noted above, the exceptions identified in this finding constitute serious violations of the *DFSCA* that by their nature cannot be cured. There is no way to truly "correct" a violation of a

consumer protection/information law once it occurs. Utah will be given an opportunity to conduct a meaningful review of its DAAPP and to bring its drug and alcohol programs into full compliance with the *DFSCA* as required by its PPA. However, Utah is advised that these remedial measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

Based on an evaluation of all available information including Utah's response, the Department will determine if additional actions will be required and will advise Utah accordingly in the FPRD.

Finding 6. Crime Awareness Requirements Not Met

Citation:

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Department's regulations require that all institutions that receive Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees a comprehensive Annual Security Report (ASR) that contains, at a minimum, all of the statistical and policy elements described in *34 C.F.R. § 668.46(b)*.

The ASR must be prepared and actively distributed as a single document. Acceptable means of delivery include U.S. Mail, hand delivery, or campus mail distribution to the individual or posting on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. *34 C.F.R. § 668.41(e)(1)*. The Department's regulations also require participating institutions to provide a notice to all prospective students and employees that includes a statement about the ASR's availability, its contents, and its exact electronic address if posted to a website. This notice must also advise interested parties of their right to request a paper copy of the ASR and to have it furnished upon request. *34 C.F.R. § 668.41(e)(4)*

Institutions are also required to include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Statistics for certain hate crimes as well as arrest and disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published for the following geographical categories: 1) on campus; 2) on-campus student residential facilities; 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property. *34 C.F.R. § 668.46(c)(1)*.

Finally, each institution must also submit its crime statistics to the Department for inclusion in the "Campus Safety and Security Data Analysis Cutting Tool." *34 C.F.R. § 668.41(e)(5)*.

Noncompliance:

Utah submitted campus crime statistics to the Department's "Campus Safety and Security Data Analysis Cutting Tool (CSSDACT)" that did not match those that were published in the University's 2011 ASR. An institution must report the same crime data to the Department as it publishes in the ASR. Specifically, Utah properly disclosed one incident of a hate crime for calendar year 2012, two instances for 2011, and one instance for 2010 in the ASR; however, however, Utah failed to identify the proper crime classification of these incidents, as required in