DEC 2 1 2021

Dr. Herman J. Felton
President
Wiley College
711 Wiley Avenue
Marshall, TX 75670-5199

Sent Overnight via UPS
1Z37X7Y30195342375

OPE-ID: 00366900

Dear Mr. Felton:

This is to inform you that the United States Department of Education ("Department") intends to fine Wiley College ("WC") $72,000 based upon the violations set forth in this letter. WC participates in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 ("HEA"), as amended, 20 U.S.C. §§ 1070 *et seq.* ("Title IV, HEA programs"). The Department is taking this fine action pursuant to 20 U.S.C. § 1094(c)(1)(F) and 34 C.F.R. § 668.84.

From March 12, 2018, through March 16, 2018, the Department's Dallas School Participation Division ("SPD") conducted an on-site program review of WC's administration of the Title IV, HEA programs during the 2016-2017 and 2017-2018 award years. During the course of the review, the Department ascertained, among other things, that WC made bonus payments in violation of the incentive compensation ban pursuant to 34 C.F.R. § 668.14(b)(22)(i). The Department issued a Final Program Review Determination ("FPRD") notice outlining these violations on September 30, 2021 (Enclosure 1).

As described in detail below, the Department has determined that WC failed to meet the fiduciary standard of conduct by providing incentive compensation, directly based on success in securing enrollments, to staff involved in admissions activities. Therefore, I have determined that as a result of these significant violations committed by WC, a fine in the amount of $72,000 is warranted.

WC Failed to Adhere to a Fiduciary Standard of Conduct

When WC began participation in the Title IV, HEA programs, school officials signed a program participation agreement ("PPA") with the Department certifying that WC would use funds received under Title IV solely for the purposes specified in each individual student assistance program, since the funds received under those programs are held in trust for the intended student beneficiary and the Secretary. 20 U.S.C. § 1094(a)(1); *see generally* 34 C.F.R. § 668.14. By entering into a PPA with the Department, WC, and its officers, accepted the responsibility to act as fiduciaries in the administration of the Title IV, HEA programs. As fiduciaries, WC and officers are subject to the highest standard of care and diligence in administering the Title IV, HEA programs and in accounting to the Secretary for the funds received. 34 C.F.R. §§ 668.82(a) and (b).

In order to meet its responsibilities to the Department, an institution must be capable of adequately administering the Title IV, HEA programs. In this regard, an institution must comply with all Title IV statutory and regulatory requirements. 34 C.F.R. § 668.16(a). As fully outlined below, WC's failure to comply with important Title IV requirements demonstrates that the institution failed to adhere to a fiduciary standard of conduct.

WC Failed to Comply with Incentive Compensation Provisions

Section 487(a)(20) of the HEA, 20 U.S.C. § 1094(a)(20), prohibits institutions from providing commissions, bonuses, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions regarding the award of Title IV, HEA program funds. *See also* 34 C.F.R. § 668.14(b)(22).

As part of the March 2018 program review, the SPD discovered that WC made payments to the Vice President of Enrollment Services ("V.P.") in violation of the incentive compensation ban. A review of records outlining payments to admissions and financial aid staff at WC during the period at issue revealed that the V.P. was paid incentive compensation bonuses totaling $36,375 during the 2016-17 and 2017-18 award years.

On March 15, 2016, the V.P. accepted WC's contract offer letter dated December 2, 2015 (Enclosure 2). Per terms of that letter, the parties agreed that the V.P. would receive a bonus of $3,125 for every 25 students enrolled by the 12th day of Fall 2016 classes that exceeded WC's enrollment of 1,250 students. For the Spring 2017 term, the parties agreed that the V.P. would be paid a bonus of $3,125 for every 15 students newly enrolled by the 12th day of classes that exceeded WC's new enrollment goal of 50 students. Records show that the V.P. received a $12,500 payment on December 30, 2016, and received a $18,750 payment on April 1, 2017.

The V.P. and WC entered into a similar arrangement for the 2017-18 award year when the V.P. signed WC's June 6, 2017, offer letter on July 11, 2017 (Enclosure 3). Under these terms, the V.P. was able to earn a $3,125 bonus in Fall 2017 for every 25 new students enrolled above WC's current enrollment. For Spring 2018, the bonus payments of $3,125 would be for every 15 newly enrolled students as of the 12th day of class that exceeded WC's new enrollment goal of 50 students. The review found that the V.P. received a payment of $3,125 on November 1, 2017, and a payment of $2,000 on February 1, 2018.

The terms of these agreements and the corresponding payments violate the ban on incentive compensation on their face. The bonuses WC paid were strictly and solely based on success in securing enrollments in excess of the institution's enrollment targets. The incentive compensation provisions are meant to deter schools from potentially enrolling unqualified students, or students who do not wish to enroll at an institution, by employees who may seek to enroll students to earn bonuses when such enrollment may not be in the best interest of the student. The Department considers violation of the incentive compensation ban to be a serious violation. The institution's PPA expressly conditioned the WC's eligibility to participate upon compliance with § 487(a)(20) of the HEA. Accordingly, WC's violation of this provision, constitutes a material breach of the school's PPA with the Department.

Initiated Fine

The Department's regulations, at 34 C.F.R. § 668.84(a), permit a fine of up to $59,017 for each violation of any provision of Title IV, or of any regulation or agreement implementing that Title. In determining he amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision in In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether an institution is above or below the median funding levels for the Title IV, HEA programs in which it participates. Thus, if the institution's funding levels for the Title IV programs in which it participates is above the median amount for institutions participating in those programs, the institution is considered large.

In the case of WC, the latest year for which complete funding data is available is the 2019-20 award year. According to Department records, students enrolled at WC received $3,586,150 in Federal Pell Grant funds, $4,579,628 in Direct Loan program funds, and $488,049 in campus-based program funds during the 2019-20 award year. The latest information available to the Department indicates that the median funding level for schools participating in the Federal Pell Grant program for the 2019-20 award year is $1,543,305, for institutions participating in the Direct Loan program $2,360,342, and for institutions participating in the campus-based programs, $277,484. Accordingly, WC is considered a large institution because its Federal Pell Grant, Direct Loan, and campus-based funding levels are above the median funding levels.

As described above, violations of the statutory and regulatory prohibitions against payment of incentives based directly or indirectly on student enrollments is very serious. The Department's legal requirements specifically restrict institutional practices concerning recruitment and admissions activities. Such protections are necessary to prevent abuses of students that may occur as the result of high-pressure sales actics and an employee's desire to obtain monetary rewards for enrolling students who may not be a fit with the institution or who do not wish to enroll but accede to the sales tactics presented After considering the gravity of the violation and the size of WC, I have set the fine at $18,000 for each bonus payment, for a total fine of $72,000.

The fine of $72,000 will be imposed on **January 10, 2022,** unless by that date we receive a request for a hearing or written material indicating why the fine should not be imposed. WC may submit either a written request for a hearing or written material indicating why the fine should not be imposed. If WC chooses to request a hearing or to submit written material, you must write to me, via overnight mail, at:

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

If WC files a timely request for a hearing, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of WC's case to an official who will conduct a hearing. WC is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If WC does not request a hearing, but submits written material instead, I shall consider that material and notify WC of the amount of the fine, if any, which will be imposed.

Any request for a hearing or written material that WC submits must be received by January 10, 2022; otherwise, the $72,000 fine will be imposed on that date.

If you have any questions or desire additional explanation of WC's rights with respect to this action, please contact Christina Fredrick of my staff at Christina.Fredrick@ed.gov or at 303-305-9648.

Sincerely,

[redacted]

Susan D. Crim, Director
Administrative Actions and Appeals Service Group

Enclosures

cc: Southern Association of Colleges and Schools Commission on Colleges Accrediting Agency
TX Higher Education Coordinating Board
TX Texas Workforce Commission-Division of Proprietary School & Veterans Education
Department of Defense, via osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil
Department of Veteran Affairs, via INCOMING.VBAVACO@va.gov
Consumer Financial Protection Bureau, via CFPB_ENF_Students@cfpb.gov