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May 1, 2015

Mr. Gary White  
Interim President  
Marshall University  
One John Marshall Drive  
Huntington, WV 25755

**UPS Tracking #**  
**1ZA879640294076253**

**RE: Final Program Review Determination**  
**OPE ID: 00381500**  
**PRCN: 201110327488**

Dear President White:

The U.S. Department of Education's (the Department) Clery Act Compliance Team issued a program review report on June 30, 2011, regarding Marshall University's (Marshall; MU; the University) compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools and Communities Act Amendments of 1989. The original text of the program review report is incorporated into this Final Program Review Determination (FPRD). MU submitted an acceptable response to the Department's report on August 31, 2011. The University's response and any supporting documentation submitted with the response are being retained by the Department and are available for inspection by MU upon request. Please be advised that this FPRD and any supporting documentation may be subject to release under the Freedom of Information Act and may be provided to other oversight entities after this FPRD is issued.

**Purpose:**

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise MU of the Department's final determinations and to close the review. Please note that this FPRD contains several findings regarding MU's failure to comply with the requirements of the *Clery Act*. Because *Clery Act* findings do not result in financial liabilities, the findings may not be appealed.

Due to the serious nature of these findings, this FPRD is being referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of possible adverse administrative action. Such action may include a fine and/or the limitation, suspension or termination of the eligibility of the institution to participate in the Title IV, HEA programs pursuant to 34 C.F.R. Part 668, Subpart G. If AAASG initiates any such action, additional

information about MU's appeal rights and procedures for filing an appeal will be provided under separate cover.

**Record Retention:**

Records relating to the period covered by this program review must be retained until the latter of the resolution of the violations identified during the review or the end of the regular retention period applicable to all Title IV records including records that pertain to the University's campus safety and drug and alcohol abuse prevention programs under 34 C.F.R. §668.24(e).

Thank you for the courtesy, cooperation, and patience shown to us throughout the program review process. If you have any questions about this FPRD or the program review process, please contact Mr. Keith Ninemire on 816-268-0418.

Sincerely,

[REDACTED]  
James L. Moore, III  
Compliance Manager  
Clery Act Compliance Team

cc:     Mr. James E. Terry, Director of Public Safety, MU [Terry@marshall.edu](mailto:Terry@marshall.edu)  
          Ms. Kathy Bialk, Director of Financial Aid, MU [bialkk@marshall.edu](mailto:bialkk@marshall.edu)

Enclosures:

Final Program Review Determination

Prepared for:  
**Marshall University**

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**OPE ID: 00381500**  
**PRCN: 201110327488**

Prepared by:  
**U.S. Department of Education**  
**Federal Student Aid**  
**Clerly Act Compliance Team**

**Final Program Review Determination**  
**May 1, 2015**

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**A. Institutional Information**

Marshall University  
One Marshall Drive  
Huntington, WV 25755-3300

**Type:** Public

**Highest Level of Offering:** Doctorate Degrees

**Accrediting Agency:** North Central Association of Universities and School - CIHE

**Current Student Enrollment:** 13,248 (2009)

**% of Students Receiving Title IV:** 52% (2009)

**Title IV Participation:**

	<u>2008-2009</u>
Federal Family Education Loan Program	\$ 14,228
William D Ford Federal Direct Loan Program	\$ 56,490,124
Federal Pell Grant Program	\$ 69,538,961
Federal Supplemental Opportunity Grant Program	\$ 732,573
Federal Work Study Program	\$ 554,564
Federal Perkins Loan Program	\$ 1,361,191

**DL/FFEL Default Rate:**      2008 5.6%  
                                        2007 6.8%  
                                        2006 6.8%

**Perkins Default Rate:**      2009 12.8%  
                                        2008 14.7%  
                                        2007 14.1%

Marshall University is a coeducational public research institution. The main campus sits on approximately 100 acres in Huntington, West Virginia. The University has extension campus sites throughout West Virginia in South Charleston, Point Pleasant, Beckley, Logan and Gilbert. At the time that the Department's review commenced, the Marshall University Police Department (MUPD) employed approximately 22 full-time campus police officers who patrol the campus 24 hours a day, 7 days a week. Under West Virginia state law, MUPD officers have the same responsibilities and authority as that of any law enforcement officer in the State. MUPD officials stated that they share information regarding arrests and all serious crimes with the Huntington Police Department and the Cabell County Sheriff's Department.

## **B. Scope of Review**

The U.S. Department of Education (the Department) conducted an off-site campus crime program review at Marshall University (Marshall; MU; the University) beginning in the spring of 2011. The review was conducted by the Clery Act Compliance Team. Mr. Keith Ninemire was the lead reviewing official.

The focus of the review was to evaluate Marshall’s compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools and Communities Act Amendments of 1989 (*DFSCA*). The *Clery Act* can be found in *Section 485(f)* of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1092(f) and the Department’s implementing regulations are at 34 C.F.R. §§668.41 and 668.46. The *DFSCA* can be found in 20 U.S.C. §1011i and the Department’s regulations are at 34 C.F.R. Part 86.

The review was initiated following several media reports that alleged that MU was not in compliance with the *Clery Act*. The first such report, which appeared in the *Charleston Gazette* on October 11, 2010, alleged that the University distributed its 2010 Annual Security Report (ASR) after the deadline date. A second report was published in *The Parthenon*, the University’s student newspaper, on October 8, 2010, which alleged that MU was not in compliance with the “Timely Warning” requirement. Following a preliminary assessment of these allegations, the Department opened an off-site review to better evaluate MU’s compliance with the *Clery Act*. As noted above, the Department’s review also included an evaluation of MU’s compliance with the *DFSCA*. During the review, Department officials examined MUPD incident reports and arrest records, student disciplinary files, and other campus safety-related records including the University’s policies and procedures.

### **Disclaimer:**

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in this FPRD concerning Marshall’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 the University of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs including the *Clery Act* and the *DFSCA*.

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

During the review, several areas of noncompliance were noted. The findings identified in the Department’s program review report appear in italics below. At the conclusion of each finding is a summary of MU’s response and the Department’s Final Determination.

### **Finding #1: Failure to Distribute the Annual Security Report**

#### ***Citation Summary:***

*The Clery Act and the Department's regulations require Title IV participating institutions to provide an Annual Security Report (ASR) to all current students and employees through appropriate publications and mailings. Acceptable means of delivery include regular U. S. Mail, hand delivery, or campus distribution to each individual or posting on the institution's internet or intranet site. If an institution chooses to distribute its ASR 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 reports availability and its exact electronic address, a description of its contents, as well as a statement that a paper copy will be provided upon request. 34 C.F.R. §668.41(e).*

#### ***Noncompliance Summary:***

*MU failed to distribute the calendar year 2009 ASR to its employees and students by the regulatory deadline. MU e-mailed notices of the report's availability to students and faculty on October 12, 2010, 12 days past the October 1, 2010 deadline. In a letter to the Department dated December 15, 2010, MU admitted that it did not distribute its calendar year 2009 ASR in accordance with the Department's regulations. In addition, the Department asked the University via email to provide evidence of when it distributed its calendar year 2008 ASR. MU has not provided the requested information.*

*Failure to actively distribute an accurate and complete ASR to current students and employees within the timeframe established by the Clery Act and the Department's regulations deprives the campus community of timely access to important campus crime information.*

#### ***Required Action Summary:***

*MU must review and revise its policies and procedures for preparing and distributing its ASR to ensure that it distributes its ASR prior to October 1 of each year. A copy of all policy changes and improvements must be provided with MU's response to this program review report. In addition, MU must submit evidence demonstrating when it distributed its calendar year 2008 ASR.*

#### ***Marshall's Response:***

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, University officials stated that MU "did not distribute its 2009 ASR by the October 1, 2010 deadline as required." MU's response also indicated that the report was distributed on October 12, 2010. In addition, MU officials conceded that the University was unable to show that the 2008 ASR was distributed to required recipients. Per the response, MU "campus public

safety officials are confident the University community was notified of the availability of the 2008” even though they “cannot provide a record” showing that it was in fact disseminated. To address this violation, Marshall’s response indicated that “it has adopted a more formal standard operating procedure for preparing and distributing its ASR to ensure it is distributed before October 1 each year.”

**Final Determination:**

Finding #1 of the program review report cited Marshall for its failure to actively distribute its 2010 ASR (referred to by the University throughout as the 2009 report) to enrolled students and current employees. As a result of this violation, MU was required to review and revise its internal policies and procedures related to its campus safety and *Clery Act* compliance and to develop and implement any new policies and procedures needed to ensure that these violations do not recur. In addition, MU was required to submit documentation showing that the 2009 ASR (referred to by the University throughout as the 2008 report) was distributed in the required manner. In its response, MU concurred with the finding and asserted that all necessary action was taken to address this violation. University officials also conceded that no documentation was available to show that the 2009 ASR was ever distributed to enrolled students and current employees. In support of its claims of remedial action, MU submitted a copy of its new enhanced ASR distribution and notification policies and procedures.

The Department carefully examined MU’s narrative response and supporting documentation. Based on that review and MU’s admission of noncompliance, the violations identified in the initial finding and above are sustained, namely that the University did not actively distribute its 2010 ASR by October 1, 2010 and that the University cannot document that the 2009 ASR was distributed at all. The review team’s examination also indicated that the identified violations were, for the most part, satisfactorily addressed by MU’s response and its new and revised internal policies and procedures. As such, the Department also determined that MU’s remedial action plan meets minimum requirements. For these reasons, the Department has accepted MU’s response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officials and directors of Marshall are put on notice that they must continue to develop the University’s campus safety program and also must take any additional action that may be needed to fully address the deficiencies and weaknesses identified by the Department as well as any other deficiencies that were detected during the preparation of its response and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed, MU 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. MU asserted that it has taken adequate remedial actions and that by doing so, that it is now in compliance with the *Clery Act* as required by its Program Participation Agreement (PPA). Nevertheless, MU officials must understand that this compliance failure deprived students and employees of important campus security information to which they are

entitled. For these reasons, the University is advised that its remedial efforts cannot and do not diminish the seriousness of these violations nor do these efforts eliminate the possibility that the Department will impose an adverse administrative action and/or additional corrective measures as a result.

In light of the serious consequences associated with compliance failures of this type, the Department strongly recommends that MU re-examine its 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 reviews, MU 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](http://www2.ed.gov/admins/lead/safety/handbook.pdf). The Department also provides a number of other *Clery Act* training resources. MU can access these materials at: [www2.ed.gov/admins/lead/safety/campus.html](http://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, MU 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 regarding sexual assault prevention and response in their ASRs. All institutions are currently obligated to make a documented good-faith effort to comply with the statutory requirements of VAWA and were obligated 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. MU officials may access the text of the Final Rule at:

<http://ifap.ed.gov/fRegisters/Attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

## **Finding # 2: Failure to Retain Records**

### ***Citation Summary:***

*The Department's regulations require an institution to maintain records in a systematically organized manner, to have the records available for review by the Secretary, and to keep the records until the end of the retention period related to the particular record, 34 C.F.R. §§668.24(d),(e)(1),(e)(2) and (e)(3)(ii). All records that document compliance with the Clery Act are required to be kept for a minimum of seven years. This is required since all supporting records must be kept for three years following the publication of the last ASR to which they apply and data included in the ASR includes the previous three years data. 34 C.F.R. §668.24(e)(3)(ii).*

***Noncompliance Summary:***

*MU did not retain records pertaining to its ASRs and supporting records used in compiling its reports for the past three years. In its letter to the Department dated December 15, 2010, MU admitted that it did not retain backup records when updating the ASRs. The letter included the following statement: “Unfortunately, the employee responsible for updating the document each year made the changes to the electronic copy without saving the older version, and never printed a copy of the document for retention prior to revising it.”*

***Required Action Summary:***

*MU must develop policies and procedures to ensure that it will retain documentation as required by the Department’s regulations. A copy of the policies and procedures must be submitted in the University’s response to this finding.*

***Marshall’s Response:***

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, MU officials represented the following: “While in previous years, Marshall had made available to the University community copies of its ASR, the University failed to retain adequate copies of past ASRs during the transition from hard copy to an online version of the report.”

Since this deficiency was brought to Marshall’s attention by the DOE, the University has developed a more stringent policy and standard administrative procedure for ensuring compliance with the DOE’s required ASR record retention policy.

Marshall’s response includes a copy of the “President’s Office Administrative Procedure” detailing how these disclosures will be retained for future reference.”

***Final Determination:***

Finding #2 of the program review report cited Marshall for not retaining essential records needed to substantiate its efforts to comply with Title IV regulatory requirements including the *Clery Act* and the *DFSCA* during 2009 and 2010. Institutions are required to maintain these records and to make them available to the Department so that the Secretary or his or her designees can conduct substantive audits, reviews, and investigations of the University’s operations. A failure to maintain a complete set of such records in an organized and systematic way may indicate that the University did not have the requisite capability to effectively administer the Title IV, HEA programs. As a result of this violation, MU was required to review and revise its internal policies and procedures related to recordkeeping and to develop and implement new policies and procedures as needed to ensure that all records are maintained appropriately and that said records are readily-available for inspection by the Secretary upon request. In its

response, MU concurred with the finding and stated that all necessary corrective action was taken, and submitted documents in support of its claims.

The Department carefully examined MU's narrative response and supporting documentation. Based on that review and the University's admission of noncompliance, the violations identified in the initial finding are sustained. The review team's examination showed that the identified violations were, for the most part, satisfactorily addressed by the University's new and revised internal policies and procedures on recordkeeping. As such, the Department has determined that MU's remedial action plan meets minimum requirements. For these reasons, the Department has accepted MU's response and considers this finding to be closed for program review purposes.

Nevertheless, the officials and directors of MU are once again put on notice that they must take any additional actions that may be needed 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, MU is reminded that an effective record retention period of seven years applies to any and all records that are in any way related to its compliance with the *Clery Act*.

Although the finding is now closed, MU is advised that the exceptions identified above constitutes a serious violation of the *Clery Act* that by its nature cannot be cured. There is no way to truly "correct" violations of this type once it occurs. MU asserted that it has taken adequate remedial actions and that by doing so, that it is now in compliance with the terms and conditions of its PPA. Nevertheless, MU officials must understand that any failure to properly retain Title IV-related records and to provide them to the Secretary upon request interferes with and frustrates the Department's ability to conduct required reviews of regulatory compliance. For these reasons, 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.

### **Finding #3: Omitted/Inadequate Policy Statements**

#### ***Citation Summary:***

*The Clery Act and the Department's regulations require that an institution must prepare an ASR that contains the following policy statements. 34 C.F.R. §668.46(b)(2)-(b)(14).*

- *A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. 34 C.F.R. §668.46(b)(2).*
- *Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in 34 C.F.R. §668.46(c)(1). 34 C.F.R. §668.46(b)(2)(i).*

- *Policies for preparing the annual disclosure of crime statistics. 34 C.F.R. §668.46(b)(2)(ii).*
- *A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in 34 C.F.R. §668.46(c)(1) for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has policies or procedures that allow victims or witnesses to report on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures. 34 C.F.R. §668.46(b)(2)(iii).*
- *A statement of policy regarding its emergency response and evacuation procedures. The statement must include; plans to conduct a test of the emergency response and evacuation procedures on at least an annual basis. A test may be announced or unannounced, but it must be conducted at a time when most of the students, faculty, and staff are expected to be present on campus. An institution must document each test, including the date, time, and whether it was announced or unannounced. 34 C.F.R. §668.46(g).*
- *A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification, in the professional judgment of responsible authorities, will compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency. 34 C.F.R. §668.46(g)(3).*

***Noncompliance Summary:***

*MU's calendar year 2009 ASR did not include the following:*

- *A policy statement for preparing the annual disclosure of crime statistics.*
- *A list of the titles of each person or organization to whom students and employees should report criminal offenses as described in 34 C.F.R. §668.46(c)(1).*

*With regard to the timely warning component of the finding, the policy contained in MU's ASR was insufficient. The ASR did not specify which official or office is responsible for issuing the warning and did not describe how the timely warning would be disseminated.*

***Required Action Summary:***

*MU must review and revise its calendar year 2009 ASR to ensure that all required policy statements and procedures are included as described in 34 C.F.R. 688.46(b)(2)-(b)(14). MU must submit a copy of the revised ASR with its response to this finding.*

**Marshall's Response:**

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, MU officials represented the following: “In response to Item #1, Marshall has developed a policy statement for preparing the annual disclosure of crime statistics. The policy statement reflects changes resulting from a December, 2010, audit conducted with the assistance of the *Clergy Act* compliance consultant the University has retained. The step-by-step procedure document outlines a specific timeframe during which the data for the annual disclosure of crime statistics is collected and the type of data that should be gathered.” Marshall’s response also notes that “as a result of its audit, the University’s 2009 ASR has been extensively revised to ensure stricter compliance with DOE requirements.

In response to Item #2, Marshall now includes in the ASR a list of the titles of each person or organization to whom students and employees should report criminal offenses. The revised ASR contains examples of those persons whom students can contact, including University Police, resident advisors, and the dean of students. Marshall is prepared to expand that list to include vice presidents, academic deans, coaches and additional administrators if the DOE recommends such an expansion.”

In response to the insufficiency in the policy for distributing a timely warning, Marshall’s response notes that it has “developed a more formal Timely Warning notice procedure which includes detailed information about who is responsible for distributing the timely warning and the methods through which students and employees will be notified.”

**Final Determination:**

Finding #3 of the program review report cited Marshall for its failure to develop and implement required campus safety and crime prevention policies and procedures in six specific and significant areas and its resultant failure to include these mandatory disclosures in its 2010 ASR. As a result of these violations, MU was required to develop and implement new policies and procedures to ensure that future ASRs include all disclosures required by 34 C.F.R. §668.46(b). Then, in accordance with those regulations and its new policies, the University was directed to produce a revised 2010 ASR and distribute it to all required recipients. In its response, MU concurred with the finding, asserted that all necessary remedial action was taken, and submitted documents in support of its claims.

The Department carefully examined MU’s narrative response and supporting documentation. Based on that review and MU’s admission of noncompliance, the Department has determined that 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 revised 2010 ASR, subsequent ASRs, and its new and revised internal policies and procedures. As such, the Department also determined that the University’s remedial action plan meets minimum requirements. For these reasons, the Department has accepted MU’s response and

considers this finding to be closed for the purposes of this program review. Nevertheless, the officers and directors of MU are once again put on notice that the University must take any additional actions that may be needed to address these violations as well as any other similar deficiencies and weaknesses that were detected during the preparation of its response and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed, MU 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 develop, implement, and disclose accurate and complete statements of policy, procedure, and programs and to include them in its ASRs is a violation of the most basic requirements of the *Clery Act*. MU asserted that it has taken adequate remedial actions and that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* as required by its PPA. Notwithstanding these actions, MU 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.

#### **Finding # 4: Failure to Disclose Crime Statistics**

##### ***Citation Summary:***

*Under the Clery Act and the Department’s implementing regulations, participating institutions must compile and publish statistics concerning the occurrence on campus of the following incidents: criminal homicide (including murder, non-negligent and negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. 34 C.F.R. §668.46(c)(1).*

##### ***Noncompliance Summary:***

*MU did not list the category of Negligent Manslaughter in its ASR. Negligent Manslaughter is a required category of crime that must be disclosed in the ASR.*

##### ***Required Action Summary:***

*MU must update its calendar year 2009 ASR on its website to include this category of crime. If MU determines that a crime of Negligent Manslaughter was reported in 2009, but was not disclosed in the ASR, then it must send an e-mail to all students and employees notifying them of the update to the crime statistics in the ASR. MU must submit a copy of the revised ASR with its response to this finding.*

##### ***Marshall’s Response:***

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, MU officials

represented the following: “The revised 2009 ASR now includes the category of Negligent Manslaughter. The ASR was updated after Marshall’s December, 2010 *Clery Act* compliance self-audit reflected this and other needed changes to the report. On January 18, 2011, Marshall notified the campus community, including students and employees, of the updated 2009 ASR.”

**Final Determination:**

Finding #4 of the program review report cited Marshall for its failure to include all required crime categories in the 2010 ASR statistical grid. Specifically, the category of Negligent Manslaughter was omitted. As a result of this failure, the University was required to add this crime category to the statistical grid in the revised 2010 ASR and to disclose therein statistics of any such offenses that were reported to CSAs and/or local law enforcement agencies. As noted previously, MU was also required to distribute the revised 2010 report to required recipients. In its response, MU concurred with the Department’s finding and described the steps that were taken to address the violation. University officials also represented that no Negligent Manslaughter offenses were reported during the years covered by the 2010 ASR and that the revised 2010 ASR was distributed on January 18, 2011.

The Department carefully examined MU’s narrative response and supporting documentation. Based on that review and MU’s admission of noncompliance, the Department has determined that the violation identified in the initial finding is sustained. The review team’s examination also showed that the identified violation was, for the most part, satisfactorily addressed by the University’s revised 2010 ASR, its subsequent reports, and its new and revised internal policies and procedures. As such, the Department also determined that the University’s remedial action plan meets minimum requirements. For these reasons, the Department has accepted MU’s response and considers this finding to be closed for the purposes of this program review.

Although the finding is now closed, MU is reminded that the exception identified above constitutes yet another violation of the *Clery Act* that cannot be cured. The requirement to include all categories of Clery-reportable crimes in its statistical disclosures is one of the most basic requirements of the *Clery Act*. MU asserted that it has taken adequate remedial actions and that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* as required by its PPA. Nevertheless, MU 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.

### **Finding #5: Failure to Publish Crime Statistics for Separate Campuses**

#### **Citation Summary:**

*The Clery Act and the Department's regulations require institutions to compile and publish separate crime statistics for each location or facility. For purposes of these statistics, the Clery Act establishes a four-part definition of campus that includes:*

- *Campus I: any building or property owned or controlled by the institution within the same reasonably contiguous geographical area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls;*
- *Campus II: any building or property owned by the institution that is within or reasonably contiguous to the area identified above, that is owned by the institution but controlled by another person or entity, is frequently used by students and supports institutional purposes;*
- *Non-campus Building or Property: any building or property owned or controlled by a recognized student organization; or any building or property owned and controlled by the institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students and is not in the same reasonably contiguous geographic area of the institution; and,*
- *Public Property: all public property that is within the campus or that is immediately adjacent to and accessible from the campus.*

*An institution must comply with the statistical reporting requirements of 34 C.F.R. §668.46 for each administrative division, location, or property that is considered a separate campus and not in the same reasonably contiguous geographical area as the main location. 34 C.F.R. §668.46(d).*

#### **Noncompliance Summary:**

*MU failed to include the campuses of South Charleston and Point Pleasant in its ASR for calendar years 2007, 2008 and 2009. These locations offer educational instructions and they are not reasonably contiguous to the main campus. In addition, MU did not disclose crime statistics for three learning sites that do not constitute separate campuses at Beckley, Logan, and Gilbert.*

#### **Required Action Summary:**

*MU must provide any documentation to show why crime statistics are not required to be reported and disclosed for these locations/sites. Otherwise, MU must collect and disclose crime statistics for its separate campuses and extension sites. Once collected, MU must update its calendar year 2009 ASR and the Department's website with the correct crime*

*statistics. In addition, MU is required to send an email notification to students and employees informing them of the changes. If MU is unable to collect crime statistics from the local police, it must submit evidence of its good-faith effort to obtain the crime statistics. If the local law enforcement agency does not respond to MU's request, then the University should include a caveat in its ASR to that effect. MU must submit a copy of the revised ASR with its response to this finding.*

**Marshall's Response:**

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, MU officials represented the following: Following the self-audit conducted in December, 2010, crime statistics from Marshall's South Charleston and Point Pleasant campuses were added to a modified version of the 2010 ASR.

Regarding the other locations mentioned in the Program Review, Marshall submits the following:

- Marshall has not provided any courses at the Larry Joe Harless Center in Logan, W. Va., for the last three years.
- Marshall has formally requested from the Raleigh County Sheriff's Office (Beckley, W.Va.), any crime data as related to the Byrd Higher Education Center in Beckley. This facility is not owned or operated by Marshall; however, the University does provide some coursework there. While the Raleigh County Sheriff has not yet provided the requested information to Marshall, Marshall will continue to pursue the collection of any reportable crime statistics for this location. If that information is not provided, Marshall will note that in its revised ASR.”

**Final Determination:**

Finding #5 of the program review report cited Marshall for its failure to request statistics of Clery-reportable crimes that were reported to CSAs and local law enforcement agencies as occurring on Marshall's separate campuses and/or in buildings or on properties that the University owned or controlled in calendar year 2009. During the program review, Department officials learned that MU did not attempt to request crime statistics from responsible officials at some of its separate campuses and non-campus buildings and properties (NCBP). Each separate campus was required to comply with all *Clery Act* requirements including the production of an ASR containing accurate and complete campus crime statistics while crime statistics for each NCBP should have been included in the disclosures for the specific campus of which it is a part. In addition, MU failed to request crime statistics from local law enforcement (LLE) for these campuses until Department officials raised the issue.

As a result of these violations, MU was required to request and compile the required crime statistics from Campus Security Authorities (CSA) and/or local law enforcement

(LLE) agencies or alternatively, provide documentation showing that the University was not required to disclose crime statistics for these apparent campuses and NCBPs. Moreover, the University was required to produce ASRs for its separate campuses and to revise its crime statistics to include offenses that were reported as occurring at NCBPs during the years covered by the 2010 ASR. And, as noted previously, MU was required to actively distribute the new and revised 2010 ASRs in the required manner. Finally, the University was required to enhance its policies and procedures on how it will request crime statistics from CSAs and LLE and how these statistics will be processed internally and disclosed to the campus community. In its response, MU concurred with the finding and described its corrective action, which included a representation that separate statistical disclosures were produced for the South Charleston and Point Pleasant campuses.

The Department carefully reviewed all available documentation including the University's response and supporting documents. Based on that review and MU's admission of noncompliance, the violations identified in the finding are sustained. The Department has also determined that MU's remedial action plan meets minimum requirements. For these reasons, the Department has accepted MU's response and considers this finding to be closed for the purposes of this program review.

Notwithstanding this action, the officials and directors of MU are put on notice that the University must take all additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the response to this report and as may otherwise be needed to ensure that these violations do not recur. In this regard, MU must develop a process to ensure that campus safety officials and others with responsibilities for *Clery Act* compliance are notified in a timely manner of all real estate transactions so that these officials can take necessary actions to: 1) ensure the safety of students and employees such as by adjusting patrol routes, assessing physical security concerns including but not limited to adequate lighting and surveillance equipment and 2) to enable officials to proactively comply with the *Clery Act* and its own campus safety and crime prevention policies and procedures.

Although the finding is now closed, MU is reminded that the exceptions identified above constitute very 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. An institution's failure to produce an accurate and complete ASR for each separate campus and to collect and disclose crime statistics for all non-campus buildings and properties deprives students, employees, and other stakeholders of important campus safety and crime prevention information to which they are entitled. MU asserted that it has taken adequate remedial actions and that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* as required by its PPA. Nevertheless, MU is advised that its remedial actions, whether already completed or planned for the future, 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.

## **Finding #6: Failure to Properly Classify and Disclose Crime Statistics**

### **Citation Summary:**

*The Clery Act and the Department's regulations require that institutions participating in the Title IV, HEA programs compile and publish crime statistics for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property of the following crimes that are reported to local police agencies or to a campus security authority: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions must disclose arrests and disciplinary actions for violations of Federal or state liquor, drug, and illegal weapons laws. 34 C.F.R. §668.46(c)(1) and (7). The Department's regulations require that, for Clery Act reporting purposes, participating institutions must compile crime statistics using the definitions of crime provided in 34 C.F.R. Part 668, Subpart D, Appendix A.*

### **Noncompliance Summary:**

*MU failed to properly classify and disclose crimes in its 2009 ASR resulting in the underreporting of crime statistics. In reviewing a sample of incident reports, the Department noted the following:*

- *Incident Report # 0902855.A35 was classified by MU as Homicide Attempted, but not included as a crime in the statistics in the ASR. Attempts to murder should be classified as Aggravated Assaults. MU's ASR reported no Aggravated Assaults for calendar year 2009.*
- *Incident Report # 0931233.A31 was reported as a battery – (assault). The report states that the victim was hit and knocked unconscious by her attacker and she was transported to a medical facility. In this case, the offense should have been classified as Aggravated Assault because the attacker used his fists as a personal weapon and the injury was severe enough to warrant medical transport. MU's ASR reported no Aggravated Assaults for calendar year 2009.*
- *Incident Report # 0900638.A28 was classified as Theft. The report notes that the item stolen was locked up behind numerous doors. This indicates the element of trespass so the offense should have been classified as Burglary, Unlawful Entry – No Force.*
- *Incident Report # 0912591.A14 was reported as a Robbery on campus, but no Robberies were disclosed in MU's ASR in the on campus category for calendar year 2009. However, MU did report three (3) Robberies in the on campus category in the statistics it reported to the Department.*

- *Incident Report # 0923772.A22 was reported as a weapons violation; however, MU's ASR reported 0 weapon violations for calendar year 2009.*

*In addition, the statistics MU disclosed in its ASR and reported to the Department regarding drug and alcohol offenses were misreported or at least inconsistent with each other. Discrepancies between MU's ASR and the statistics that MU provided to the Department (ED) are noted below:*

*Discrepancies noted in statistics for Liquor and Drug Law Violations Arrests:*

<b>Drug Abuse Violations</b>	<b>On Campus Property</b>	<b>Residential Facilities</b>
MU's ASR	21	21
Reported to ED	31	22

<b>Liquor Law Violations</b>	<b>On Campus Property</b>	<b>Residential Facilities</b>
MU's ASR	25	24
Reported to ED	48	33

*Discrepancies noted in statistics for Liquor and Drug Law Violations Referrals:*

<b>Drug Abuse Violations</b>	<b>On Campus Property</b>	<b>Residential Facilities</b>
MU's ASR	31	22
Reported to ED	21	21

<b>Liquor Law Violations</b>	<b>On Campus Property</b>	<b>Residential Facilities</b>
MU's ASR	48	33
Reported to ED	25	24

**Required Action: Summary**

*MU may submit any documentation to support that specific offenses discussed above were classified properly. Otherwise, MU is required to reclassify and correct its crimes statistics for calendar year 2009. In addition, MU must reconcile the discrepancies in the statistics disclosed in its ASR and those reported to the Department regarding the number of arrests/referrals for liquor and drug law violations for calendar year 2009. MU is also required to send an email notification to its students and employees regarding these changes and updates. Finally, MU must develop and implement a comprehensive system of policies and procedures to ensure that these findings do not recur. MU must submit a copy of the revised ASR with its response to this finding.*

**Marshall's Response:**

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, MU officials represented the following: “Marshall recognizes its noncompliance with classification of crime statistics as identified through the DOE’s Program Review and it has taken steps to ensure compliance. Through Marshall’s December 2010 compliance self-audit, the University has revised its reporting measures for crime statistics for the ASR to comply with DOE and *Clery Act* requirements.” With regard to the specific incidents noted in the review, Marshall submits the following:

- “#0902855.A35 – This was corrected during the audit and is now included in the ASR.
- #0931233.A31 – This has been corrected and is reflected in the updated ASR.
- #0900638.A28 – This has been changed from theft to burglary in the ASR. The counts of larceny subsequently changed from 141 to 140.
- #0912591.A14 – The self-audit determined it occurred on public property, thus bringing the new total to six. This has been corrected in the ASR.
- #0923772.A22 – In this incident, there was no violation of law, but a University policy violation. The subject in the report had a valid concealed weapons permit from the Commonwealth of Virginia. As no crime was committed, the case was referred to Judicial Affairs for University policy violation.

Since the December audit, discrepancies in Liquor and Drug Law Violations Arrest reported to the DOE have been corrected and now match what is reported in the ASR.

Marshall has completed formal training on how to audit and compare its crime reports with the required *Clery Act* disclosures. Marshall has audited crime reports from 2007, 2008 and 2009 and adopted best practices for disclosures in the ASR. The MUPD also recently purchased and installed new computer software that includes a Clery Act component to facilitate more accurate reporting.”

**Final Determination:**

Finding #6 of the program review report cited Marshall for its failure to properly classify and disclose crimes in its 2010 ASR. The specific statistical violations are noted in the noncompliance section above. The review team also identified numerous reporting discrepancies between the statistics that were included in the 2010 ASR and those that were reported to the Department. As a result of this violation, MU was required to either submit documentation to support its crime classifications or to reclassify the incidents identified in the program review report and to adjust its statistics accordingly. In addition, the University was required to reconcile any discrepancies between the statistical disclosures in its 2010 ASR and those that were reported to the Secretary for inclusion in the Campus Safety and Security Data Analysis Cutting Tool. Finally, MU was required to review and revise existing internal policies and procedures that pertain to the compilation of campus crime statistics and the disclosure of those statistics in the

ASR. In its official response, MU concurred with the finding and stated that adequate remedial action was taken. MU also represented that it revised its campus crime statistics for calendar years 2007, 2008, and 2009 and included the corrected in the revised 2010 ASR. Marshall also submitted documentation showing that the revised report was distributed along with a copy of its new and revised policies and procedures.

The Department carefully examined MU's narrative response and supporting documentation. Based on that review and the MU's admission of noncompliance, the Department has determined that all exceptions noted in the initial finding are sustained with the exception of the offenses documented in incident report #0923772.A22. The review team's examination also indicated the identified violations were, for the most part, satisfactorily addressed by the University's revised 2010 ASR, its subsequent ASRs, and its new and revised policies and procedures. As such, the Department determined that MU's remedial action plan meets minimum requirements. For these reasons, the Department has accepted MU's response and considers this finding to be closed for the purposes of this program review; however, the officers and directors of MU are put on notice that the institution must take all additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the institution's response and as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed, MU is reminded that the exception identified above constitutes serious violations of the *Clergy Act* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. MU asserted that it has taken adequate remedial actions and that by doing so, that it is now in compliance with the *Clergy Act* as required by its PPA. Nevertheless, University officials must understand that the requirement to compile and disclose accurate and complete campus crime statistics is fundamental to the campus safety and crime prevention goals of the *Clergy Act*. For these reasons, 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.

#### **Finding #7: Failure to Comply with the Drug and Alcohol Prevention Regulations**

##### ***Citation Summary:***

*The Department's regulations and the Drug Free Schools and Communities Act require each institution of higher education to conduct a biennial review of its drug prevention 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).*

*In addition, an institution's drug prevention program must include an annual distribution of information about the institution's drug prevention program 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:***

*MU's biennial review for 2010 does not address the effectiveness of its drug prevention program, its consistency in enforcing sanctions for violators, or recommendations for changes to the program. In addition, while MU's alcohol and drug prevention program mentions annual distribution, it fails to describe exactly how this is done, and raises the question as to whether it was done in writing to each employee and student.*

***Required Action Summary:***

*MU is required to review its drug and alcohol prevention program to ensure its compliance with the requirements in 34 C.F.R. §86.100. MU must modify its biennial review to ensure it includes a determination of its program effectiveness; changes to the program are implemented, if they are needed, and the disciplinary sanctions described in paragraph (a)(5) of this section are consistently enforced. In response to this finding, MU must submit a copy of its modified biennial review and evidence of the distribution of its annual drug and alcohol program as required by the Department's regulations.*

***Marshall's Response:***

In its official response, Marshall concurred with the finding and stated that remedial action was taken as directed in the program review report. Specifically, MU officials represented the following: Marshall recognizes the shortcomings with the required biennial review of the University's drug and alcohol abuse prevention program. Since this was brought to Marshall's attention, the University has revised the 2010 Biennial Review.

As discussed in the new "President's Office Administrative Procedure for Ensuring Compliance with Federal Disclosure Requirements," Marshall has adopted a more formal process to ensure not only the biennial review includes the necessary recommendations for changes to the program, but also that it is distributed in a timely fashion each year to each employee and student.

Since December 2010, Marshall has undertaken a self-audit of its drug and alcohol abuse prevention program, per DOE's requirements. Marshall's biennial review has been modified to include the results of that audit.

A copy of the revised biennial review is submitted with this response. In addition, a copy of the notification provided to the campus community regarding Marshall's Alcohol and Other Drug prevention programs, intervention, and education programs is included."

**Final Determination:**

Finding #7 of the program review report cited Marshall for violations of the *DFSCA* and Part 86 of the Department's General Administrative Regulations. Specifically, the University did not conduct a substantive review to determine the effectiveness of its DAAPP and as a result, was unable to produce the required report of findings. In addition, the review team found that the University had not produced an annual disclosure document that summarized its program and therefore, was also unable to distribute program materials to students and employees, as required.

As a result of these violations, Marshall University was required to review and revise its DAAPP as needed. In addition, the University was required to produce a DAAPP disclosure that accurately summarized its program and to actively distribute it to all enrolled students and current employees. Furthermore, Marshall University was required to conduct a biennial review to: 1) evaluate the effectiveness of its existing drug and alcohol programs and its DAAPP; 2) assess the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct; and 3) identify necessary improvements and modifications. The University was also required to produce a detailed report to document its findings in each of these areas. Finally, MU was required to develop and implement new policies and procedures to ensure that all future biennial reviews are substantive, fully documented, and completed on the required schedule. In its response, the University concurred with the finding, stated that remedial action was taken, and submitted documents in support of its claims.

The Department carefully examined MU's narrative response and supporting documentation. Based on the Department's review and MU's admission of noncompliance, 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 and new program materials, its 2010 biennial review report, and new 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 the response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of MU are put on notice that the University must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the University's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

In this regard, MU officials are advised that the University must continue to develop its DAAPP and other program materials. Care must also be taken to ensure that accurate and complete program materials are distributed to all members of the campus community. And finally, the University must continue to ensure that biennial reviews are conducted on the required schedule and that each report includes substantive information about the conduct of the review including details about the research methods used and

outcomes reached. In addition, all findings and recommendations must be supported by valid evidence. Finally, all reports must be approved by MU's President and/or board.

Although this finding is now closed, MU 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. MU asserted that it has taken adequate remedial actions and that by doing so, is now in compliance with the *DFSCA* as required by its PPA. Nevertheless, MU 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 may deprive institutions of important information about the effectiveness of any drug and alcohol programs that may have been in place. For these reasons, MU is advised that its current or future 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 MU 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.