



November 29, 2021

Mr. Paul Pastorek
President and CEO
The University of Arizona Global Campus
180 South Arizona Avenue, Suite 301
Chandler, AZ 85225- 9606

Sent via email to:
paul.pastorek@uagc.edu

**Re: University of Arizona Global Campus
OPE ID: 00188100**

Dear Mr. Pastorek:

I am writing on behalf of the U.S. Department of Education's ("Department's") office of Federal Student Aid ("FSA"), to notify Ashford University ("AU") of its failure to comply with the regulatory requirements for continued participation in the student financial assistance programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.* ("Title IV, HEA programs") following a change in ownership, and in response to inquiries relating to the submission of audited financial statements. This letter provides AU with an opportunity to comply with those regulatory requirements as described below, and notifies AU that continued failure to comply will lead to loss of eligibility.

In short, for the reasons described below, AU must provide a December 1, 2020 consolidated Same Day Balance Sheet/Statement of Financial Position ("SDBS") at the level of its sole corporate member, which is also the entity that submitted two years of audited financial statements for the purposes of its materially complete application to continue participating in the Title IV, HEA programs under new ownership: University of Arizona Foundation ("UAF"). Submission of a SDBS is required by 34 C.F.R. § 600.20(h)(3)(i), and it must be submitted in accordance with FSA's directions so that FSA can assess the institution's financial strength under its new ownership structure. If UAF continues to refuse to provide a consolidated SDBS, then UAF's audited financial statements cannot be considered to meet the requirements for the new owner financial statements required under 34 C.F.R. § 600.20(g)(2)(iv), and AU will be considered to have failed to submit a materially complete application and its eligibility ended on December 1, 2020, the date of the change in ownership. However, the Department is offering UAGC an opportunity to provide the 25% Letter of Credit applicable to new owners ("New Owner LOC") in lieu of submitting the consolidated SDBS.

AU underwent a change in ownership that resulted in a change in control ("CIO") on December 1, 2020 ("the Transaction"). The CIO was accomplished pursuant to the terms of an Asset Purchase and Sale Agreement ("APSA") dated August 1, 2020 between Zovio, Inc., a Delaware corporation ("Zovio") and Ashford University, LLC, a California limited liability company, on

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

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one hand, and the Arizona Board of Regents, a body corporate, for and on behalf of the University of Arizona (“UofA”), and The University of Arizona Global Campus, an Arizona nonprofit corporation (“UAGC”), on the other hand. In conjunction with the CIO, Ashford University changed its name to University of Arizona Global Campus (for simplicity, the institution is referred to herein as “AU”).

An institution that undergoes a CIO that results in a change of control ceases to qualify as an eligible institution upon the change in ownership and control. 34 C.F.R. § 600.31(a)(1). However, the Department may, under the provisions of 34 C.F.R. § 600.20(g) and (h), continue the institution’s participation in the Title IV, HEA programs on a provisional basis, provided that the institution submits, under the provisions of 34 C.F.R. § 600.20(g), a materially complete application, no later than ten business days after the change occurs. 34 C.F.R. § 600.31(a)(2)(i).

AU first notified the Department of the proposed CIO/nonprofit conversion that it ultimately consummated on December 1, 2020 through a conference call on July 30, 2020. AU then requested an abbreviated pre-acquisition review of the Transaction and submitted an electronic application (“E-App”) with supporting documents for the Department’s review on October 7, 2020. According to AU’s October 7, 2020 letter, UAGC would be the level 1 owner of AU, and UAF, the sole member of UAGC, would be the level 2 owner. AU stated in the letter that it understood the purpose of the abbreviated pre-acquisition review was to determine whether the Department would require a New Owner LOC to be posted to meet the requirements of 34 C.F.R. § 600.20(g)(2)(iv) (two years of audited financial statements for institution’s new owner) as part of a materially complete application.

AU’s supporting documents included audited financial statements of UAF for the fiscal years ended (“FYE”) June 30, 2020 and June 30, 2019, which were prepared in accordance with Generally Accepted Accounting Principles (“GAAP”) and audited in accordance with Generally Accepted Government Auditing Standards (“GAGAS”). AU specifically requested that the Department confirm that the UAF financial statements met the requirements of 34 C.F.R. § 600.20(g)(2)(iv) and that as a result the Department would not require a New Owner LOC. AU stated that UAF was in a “strong financial position”, and that its 2020 audited financials disclosed that it had over \$22 million in unrestricted assets and over \$1 billion in restricted assets. However, AU closed the Transaction on December 1, 2020, without waiting for the Department to complete the abbreviated pre-acquisition review.

AU submitted its E-App for approval of the institution’s continued participation in the Title IV, HEA programs, and its request to convert to a nonprofit institution for purposes of its participation in those programs, on December 1, 2020. On December 9, 2020, the Department sent a letter to AU requesting additional and updated documents for the Department’s post-closing review of both the CIO and the request for nonprofit status (“December 9th Letter”). The December 9th Letter provided AU with a chart summarizing the status of the documentation required in 34 C.F.R. § 600.20(g)(2) for a materially complete application so that a Temporary Provisional Program Participation Agreement (“TPPPA”) could be issued. The letter also advised AU of the documentation required to comply with 34 C.F.R. § 600.20(h)(3) for

continuation of the TPPPA.¹ The December 9th Letter further informed AU that failure to submit a materially complete application in accordance with 34 C.F.R. § 600.20(g)(2)(i) (no later than 10 business days after the CIO) would subject the institution to a loss of eligibility pursuant to 34 C.F.R. § 600.31(a) and 34 C.F.R. § 668.14(g)(1). To meet the requirements of 34 C.F.R. § 600.20(g)(2)(iv) (as noted in the chart), the Department requires that new owner audited financial statements be submitted at the level of the entity at the highest unfractured level of new ownership. The chart reflected AU's submission of the audited financial statements of UAF for FYE June 30, 2019 and June 30, 2020 to meet the requirements of 34 C.F.R. § 600.20(g)(2)(iv). The December 9th Letter also informed AU that although UAGC was a newly created entity, no 25% New Owner LOC would be required because UAF (UAGC's sole member) had provided two fiscal years of audited financial statements. If the Department had not accepted UAF's financial statements to meet the requirements of a materially complete application, a 25% New Owner LOC would have been required. The amount of that LOC would have been \$102,562,872.

The December 9th Letter also advised AU that should the Department grant AU a TPPPA, the TPPPA could be extended on a month-to-month basis only if, prior to the expiration date (the last day of the month following the month in which the CIO occurred), AU submitted the documentation required by 34 C.F.R. § 600.20(h)(3). The Department again provided AU with a chart summarizing the status of all the documentation required in 34 C.F.R. § 600.20(h)(3), **and informed AU that failure to submit the required documents would subject the institution to a loss of eligibility.** 34 C.F.R. § 600.20(h)(3)(i) requires the submission of an audited SDBS as of the date of the ownership change. In regard to this requirement, the Department directed AU to: *“Please submit the “same day” statement of financial position at the Level Two (UAF) for December 1, 2020 via the eZ-Audit system. The Department will determine if other financial statements will need to be submitted after it reviews the documents submitted in response to this letter.”*

The December 9th Letter (at footnote 2) further informed AU that it could take advantage of the 6-month extension of the deadlines set forth in 34 C.F.R. § 600.20(h)(3) for the continuation of the TPPPA provided in the Department's May 15, 2020 electronic announcement by providing the Department with a copy of the engagement letter for preparation of the audited SDBS by the deadline set forth in 34 C.F.R. § 600.20(h)(3). The Department informed AU that if it elected to take advantage of the extension, AU would continue under the TPPPA until all required materials were received and reviewed by the Department.

On December 18, 2020, and again on January 8, 2021, AU notified the Department that it was availing itself of the extension of the deadline for submission of the SDBS. AU stated that it would provide an engagement letter from the auditing firm that would issue the SDBS by the end

¹ The TPPPA was issued on January 11, 2021, and expired on January 31, 2021 in accordance with 34 C.F.R. § 600.20(h)(2)(iii). An institution's TPPPA is extended on a month-to-month-basis while a CIO is evaluated so long as the institution submits the documentation required by 34 C.F.R. § 600.20(h)(3)(i) – (iv).

of January 2021. The Department countersigned AU's TPPPA on January 11, 2021, which UAF had signed as the owner and sole member of AU.

On January 29, 2021, AU sent the Department a letter in which it represented that it was submitting a copy of an engagement letter with Ernst & Young to perform an audit of UAF's statement of financial position as of December 1, 2020. What AU actually submitted, however, was a January 11, 2021 letter of engagement from Ernst & Young LLP to audit and issue a report on the financial statements of UAF as of November 30, 2020, the day before the CIO Transaction, and for the period from June 30, 2020 to November 30, 2020. AU also submitted a January 28, 2021 letter of engagement from KPMG LLP to audit UAGC's statement of financial position as of December 1, 2020.

On May 12, 2021, AU submitted (via the Department's eZ-audit system) financial statements for UAF for FYE 2019 and 2020, as well as financial statements for UAF for July 1, 2020 through November 30, 2020 (the day before the Transaction closed).² It also submitted a SDBS for UAGC as of December 1, 2020 (the day of the Transaction closed). The Department's screeners rejected the UAGC SDBS because it did not comply with GAGAS. On June 16, 2021, AU submitted a SDBS for UAGC (only) for December 1, 2020, and financial statements for July 1, 2020 to November 30, 2020 for UAF. To date, AU has not submitted the required consolidated SBDS at the level of UAF as of December 1, 2020, as required in the December 9th Letter. **AU therefore did not qualify for an extension of its TPPPA after the six-month extension of the expiration date from January 31, 2021 to July 31, 2021.** Accordingly, AU is subject to loss of eligibility to participate in the Title IV, HEA programs effective August 1, 2021.

As set forth above, the Department did not require a 25% New Owner LOC to be posted because UAF, as the sole member of UAGC, provided the two years of audited financial statements required to satisfy 34 C.F.R. § 600.20(g)(2)(iv). However, AU now states that it is unable to provide consolidated financial statements to comply with the annual audit submission requirements set forth at 34 C.F.R. § 668.23, and it failed to submit a consolidated SDBS for UAF to satisfy the requirements of 34 C.F.R. § 600.20(h)(3)(i).

Specifically, in an October 26, 2021 email, Stephanie Cowsert, AU's Vice President for Financial Aid and Military Policy & Compliance, told the Department that "for financial reporting purposes, UAGC cannot be consolidated with UAF, as it does not meet the consolidation criteria in Accounting Standards Codification (ASC) 810, Consolidations, of the Financial Accounting Standards Board (FASB)."³ The Department has not found anything in

² When AU submitted the UAF July 1 – November 30, 2020 financial statements it identified them as a SDBS.

³ The email further explains that "[i]n preparing its annual financial statements for submission to the State of Arizona Office of the Auditor General, UofA determined that while UAGC has a contractual affiliation with the UofA, it does not meet the definition of a component unit, in accordance with the requirements under the Government Accounting Standards Board (GASB). As such, UAGC's financial statements cannot be consolidated with the financial statements of UofA." However, the Department never

ASC 810 *that would preclude consolidation* under the circumstances presented here - where UAF audited financial statements were submitted for purposes of compliance with 34 C.F.R. § 600.20(g)(2)(iv) to demonstrate financial strength under the new ownership.

In its October 7, 2020 request for the abbreviated pre-acquisition review, AU explained that UofA would not be financially responsible for the debts and liabilities of UAGC. Accordingly, the Department did not require the financial statements to be submitted at the level of UofA for compliance with 34 C.F.R. § 600.20(g)(2)(iv). Rather, and as explained above, because AU represented in its October 7, 2020 letter that UAF is financially sound and would be responsible for the debts of UAGC, the Department accepted UAF's financial statements to satisfy 34 C.F.R. § 600.20(g)(2)(iv) (requirement that new owner submit two years of audited financial statements). In its December 9th Letter, the Department specified that the SDBS required to satisfy the requirement of 34 C.F.R. § 600.20(h)(3)(i) would be the consolidated statement of financial condition of UAF as of December 1, 2020. AU has not submitted the required SDBS.

AU has tried to have it both ways. It submitted UAF's financial statements to meet the requirements of a materially complete application to avoid a 25% New Owner LOC. But instead of a consolidated SDBS at the level of UAF, it submitted the SDBS for UAGC and financial statements through November 30th for UAF. And it proposes to submit future annual statements on a combined basis for UAGC and UAF (rather than on a consolidated basis at the level of UAF). If UAF cannot or will not submit a consolidated SDBS at the level of UAF, UAF's audited financial statements cannot be considered for the purpose of meeting the requirements of 34 C.F.R. § 600.20(g)(2)(iv). As a result, AU failed to submit a materially complete application and its eligibility ended on December 1, 2020, the date of the CIO. However, the Department will give UAGC an opportunity to provide the 25% New Owner LOC in lieu of submitting the SDBS on a consolidated basis.

Immediate action required of AU:

AU must comply with the following requirements within the stated deadlines. If it fails to do so, AU will lose Title IV eligibility:

Within 10 business days of the date of this letter (by December 13, 2021), AU must:

1. Submit an engagement letter from an auditor that will provide the required audited consolidated SDBS at the level of UAF, as previously requested by FSA; or
2. Notify the Department that it will post a 25% New Owner LOC in lieu of submitting the consolidated SDBS. The Department will provide further instructions upon the notification.

requested that UAGC's financial statements be consolidated *with UofA*. Rather, the Department's requirement was for AU's Level 2 owner, UAF, to provide consolidated financial statements and a consolidated SDBS that includes UAGC as of the date of the CIO.

Within 45 calendar days of the date of this letter (by January 13, 2022):

1. Submit the required audited consolidated SDBS; or
2. Submit the 25% New Owner LOC in the amount of \$102,562,872.⁴

AU's failure to comply with these requirements in this timeframe, will result in the following actions:

- AU will immediately be placed on Stop Pay, precluding access to any further Title IV, HEA program funds; and
- FSA will subsequently process a loss of eligibility.

Future submissions:

Audited financial statements must be submitted on a consolidated basis with UAF. However, if the New Owner LOC is posted, AU may submit financial statements at the level of UAGC.

Please contact Jane Eldred at Jane.Eldred@ed.gov if you have any questions regarding the content of this notice.

Sincerely,



Michael Frola
Division Chief
Multi-Regional and Foreign Schools Participation Division

Enclosures:

- Request for Information – Post-Acquisition Review of the Change in Ownership – Ashford University, OPE ID 00188100 – letter issued December 9, 2020
- Temporary Provisional Program Participation Agreement, Effective January 11, 2021

⁴ The 25% New Owner LOC must be issued by a financial institution insured by the Federal Deposit Insurance Corporation ("FDIC"). The expiration date of the 25% New Owner LOC must be no earlier than 10 months following the end of the first full fiscal year following the date of the closing of the Transaction. Once AU submits and the Department accepts and approves audited financial statements that cover one complete fiscal year under the new ownership, along with an acceptable compliance audit, the Department may determine that the 25% New Owner LOC can be reduced to an irrevocable 10% New Owner LOC, under the same funding guidelines. If the 25% New Owner LOC is reduced to 10%, the reduced New Owner LOC will remain in effect at least until AU submits and the Department accepts and approves a second full fiscal year of audited financial statements under its new ownership. The expiration date of the 10% New Owner LOC must be no earlier than 10 months following the end of the second full fiscal year of the institution following the date of the closing of the Transaction.

The University of Arizona Global Campus

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cc: AZ State Board for Private Postsecondary Education (via email at kevin.lamountain@azppse.gov)
CA Bureau for Private Postsecondary Education (via email at deborah.cochrane@dca.ca.gov)
Western Association of Schools and Colleges - Sr. Colleges & Universities (via email at jstudley@wscuc.org)