



THE UNIVERSITY OF ARIZONA
**Executive Office
of the President**

1200 E. University Blvd. Rm. 200
P.O. Box 210021
Tucson, AZ 85721-0021

Ofc: 520-621-5511
Fax: 520-621-9323

president.arizona.edu

December 17, 2021

The Honorable James Kvaal
Under Secretary of Education
United States Department of Education
400 Maryland, S.W.
Washington, D.C. 20202

Via Email

Re: The University of Arizona Global Campus

Dear Under Secretary Kvaal:

On behalf of The University of Arizona (“UA”) and The University of Arizona Global Campus (“UAGC”), thank you for our meeting on Wednesday, December 15, 2021, with your colleagues Lisa Brown, Donna Mangold and Mike Frola to discuss a proposed path forward in lieu of the two options presented in the letter dated November 29, 2021, from the U.S. Department of Education (“Department”) to UAGC. We are also joined on this letter by our colleague John-Paul Rocznik, President and CEO of The University of Arizona Foundation (“UAF”) (“Parties” refers collectively to UA, UAGC and UAF).

The purpose of this letter is to request an extension sufficient for the Parties and the Department to consider the three options discussed during our meeting, as summarized below, in light of the additional information provided in this letter and the attached documents.¹ Specifically, the Parties request an extension until January 31, 2022, to determine whether the election of either Option #1 or Option #2 is legally and factually feasible. That said, during the period of the extension, the Parties are prepared to work with the Department on a decision to pursue Option #3, thereby rendering the other two options moot. In addition to the extension, we request that the Department refrain from imposing any of the remedial actions and requirements set forth in the letter of November 29, 2021, given that UAGC is otherwise in compliance with conditions imposed by the Department.

Option #1 – Consolidated Financial Statements

For the reasons explained in UAGC’s letter dated December 14, 2021, UAGC and UAF are not in a position to elect the option to submit an auditor engagement letter by December 20, 2021 to provide an audited Same Day Balance Sheet (“SDBS”) consolidated at the level of UAF, UAGC’s Level 2 “owner”, and Option #1 generally presents significant challenges and complexity for UAF given the judgment of its independent auditor. The UAF Chief Financial Officer, in consultation with UAF’s independent auditor, Ernst & Young (“EY”), after thorough analysis of UAF’s role in UAGC, concluded that UAF is precluded from issuing consolidated financial statements under Accounting Standards Codification (ASC) 958-810-25-2 (which defines control for the purpose of a consolidated audit). As explained in this letter and UAGC’s December 14, 2021 letter, however, UAGC is able to provide combined audited financial statements and UAF and UAGC are willing to provide appropriate legal attestations to ensure the

¹ In a December 16, 2021 email from the Department’s General Counsel Lisa Brown to UAGC’s outside counsel Charlie Rose in response to an earlier email from Mr. Rose on next steps after the meeting on December 15, 2021, Ms. Brown advised Mr. Rose that, if the Department is to consider options other than those set forth in the November 29, 2021 letter, the Department will need to receive a written request for an extension along with an explanation of the options, their rationale and timing, and relevant supporting documentation.

Department is comfortable that there are no other obligations of UAF that are not disclosed on the combined audited financial statements. Nevertheless, the Parties are continuing to give further consideration to this Option, but they need more time to assess this Option in light of the complexities.

Option #2 – Letter of Credit

As also explained in UAGC's December 14, 2021 letter, the option to notify the Department that it will post a 25% New Owner LOC in lieu of submitting the consolidated SDBS by December 20, 2021 is equally challenging for the Parties. First, UAGC does not have sufficient funds on-hand to obtain a cash collateralized LOC in the amount of approximately \$103 million, nor does UAGC currently have sufficient funds to purchase an insurance product to collateralize the LOC. Similarly, UAF does not have currently unrestricted funds available for such use. Second, as we have discussed, UA is evaluating both (i) its obligations to indemnify UAF under the Indemnification Agreement (Attachment #4) with respect to a claim related to UAF's possible collateralization of the New Owner LOC, and (ii) related complex legal issues, including under Arizona law.

Option #3 – Alternative Path Forward²

The preferred path forward for UA, UAGC and UAF is for (i) the Department to accept the combined audited SDBS of UAGC and its sole corporate member, UAF, and the combined audited financial statements for the fiscal year ended June 30, 2021, of UAGC and UAF, displaying a composite score for both entities and an attestation report of these combined financial statements showing a combined composite score; and (ii) UA and UAGC to agree to waive the three-year waiting period and expedite the UA Acquisition Option of UAGC as set forth in Section VIII of the Affiliation Agreement between UA and UAGC (Attachment #3) ("UA/UAGC Acquisition Option").³

In addition, UAGC will provide a legal attestation from UAF and UAGC concerning such matters as the Department believes are not sufficiently covered in the combined audited financial statements of these entities and would otherwise be covered in an audit of a consolidated SDBS and consolidated financial statements for fiscal year ended June 30, 2021.⁴

UAGC and UA will also embark on the necessary next steps to effectuate the UA/UAGC Acquisition Proposal (with UAGC retaining its own OPEID Number) and to obtain all requisite approvals to move expeditiously toward completing the integration of UAGC into UA, including:

- Amend Section VIII of the Affiliation Agreement between UA and UAGC to permit the UA/UAGC Acquisition Option prior to the three-year anniversary of the November 12, 2020 effective date of the Affiliation Agreement;

² As we discussed, the imposition of a letter of credit is unnecessary given the strong financial condition of UAGC and would be a significant hardship for UAGC and would divert financial resources otherwise used for operations and the educations of its students. That said, if the Department requires a letter of credit, we ask that the Department provide for a reduced letter of credit of not more than 10% of the most recently completed fiscal year's Title IV disbursements.

³ Under Option #3, the Department would not impose any letter of credit obligation, including one associated with the failure to provide consolidated audits or in light of the composite score exhibited on Zovio's 2019 audited financials.

⁴ While UAGC believes that audited combined financial statements are sufficient given its and UAF's strong financial position, UAGC, as indicated, is willing to accept heightened cash monitoring Level 1 and periodic enrollment and financial status reporting if the Department believes such measures become necessary next year.

- Submission of the UA/UAGC Acquisition for approval of the Arizona Board of Regents (“ABOR”);⁵
- Submission of UA/UAGC Acquisition for approval of the UAGC Board of Directors;
- Submission of Substantive Change Request to the Higher Learning Commission of the North Central Association (“HLC”) for the UA/UAGC Acquisition, with copy to Western Association of Schools & Colleges Senior College & University Commission (“WSCUC”); and
- Submission of a Comprehensive Pre-Acquisition Review to the Department.

The parties estimate that the timeframe to accomplish the UA/UAGC Acquisition Option is approximately twelve months.⁶

List of Requested Documents

Attached to this letter are the following requested documents.

- Attachment #1: The relevant provisions of the Asset Purchase and Sale Agreement between UA, UAGC, Ashford University, LLC (“Ashford”), and Zovio, Inc. (“Zovio”), dated August 1, 2020 (“APA”), previously provided to the Department on January 8, 2021 as part of the application of the change in ownership, as follows:
 - Sections 1.4 and 1.5 on included and excluded liabilities;
 - Section 9.1 concerning indemnification for breaches of representations and warranties made by Zovio and Ashford;
 - Schedule 3.22(a) and (b), the schedule of litigations and other pending matters that were specifically excluded; and
 - Exhibit A, the Definitions used in the APA.
- Attachment #2: Copies of the insurance policies providing coverage for breaches of any representation and warranty made by Zovio (subject to certain exclusions), which were also annexed to the APA.
- Attachment #3: The relevant provisions of the Affiliation Agreement between ABOR for and on behalf of UA and UAGC, effective November 12, 2020, previously provided to the Department on January 8, 2020 (“Affiliation Agreement”), as follows:
 - Section VIII concerning the UA Acquisition Option; and
 - Section XII (H) concerning Amendments.
- Attachment #4: Indemnification Agreement between UA and UAF, dated November 16, 2020.

⁵ Key elements of UA’s internal plan for approval by ABOR include, but may not be limited to the following:

- Review of the plan with the Faculty Senate;
- Consultation with ABOR regarding the detailed plan;
- Determination of the most appropriate academic and accreditation structure (e.g., branch campus, faculty, curriculum, shared governance, degrees, etc.);
- Determination of the most appropriate corporate structure and governance (e.g., retain as an Arizona non-profit corporation exempt from federal tax pursuant to Section 501(c)(3) of the Internal Revenue Code);
- Align and integrate UAGC with other UA offerings, including Arizona Online and international micro campuses;
- Consultation with UA’s regional accreditor, the Higher Learning Commission of the North Central Association (“HLC”); and
- Review and final approval of the detailed plan by ABOR.

⁶ While there would be additional approvals required related to programmatic accreditations and state authorizations related to online learning if UAGC is unable to obtain membership in SARA this year, none of these approvals should materially affect or prolong the timeline laid out above.

- Attachment #5A-5D: UA's Annual Comprehensive Financial Report for the Year Ended June 30, 2021, which is audited by the Arizona Auditor General and includes the previously provided audited financial statements of UAF for the fiscal year ended June 30, 2021, as UAF is a component unit of the UA.

Discussion

As explained at the meeting, UA desires to integrate UAGC to further UA's land grant mission by expanding its reach to working adult students in an online setting. Such efforts are difficult to do organically,⁷ and incorporation of UAGC will be the most efficient and effective way for UA to accomplish this important goal.

The Parties do not believe the Department is receiving incomplete financial information for the purpose of determining financial responsibility under the Department's regulations. Generally, combined audited financial statements of related organizations provide more information and visibility regarding financial positions and relations than an audited consolidated financial statement would typically provide. This approach would give the Department additional meaningful visibility into the audited financial statements of both UAGC and UAF. As we mentioned during our meeting, UAF's financial statements are incorporated into the UA's Annual Comprehensive Financial Report, which is audited by the Arizona Auditor General (Attachment #5). Nonetheless, we agree to provide appropriate legal attestations from UAF and UAGC to ensure the Department is comfortable that there are no other obligations of UAF that are not disclosed on the combined financial statements.

In addition, UA has indemnified UAF for any liabilities associated with UAF taking on the role of sole member of UAGC (Attachment #4). As a result, UA could face significant risk if UAGC were to somehow fail as an institution. This not only makes UA an important stakeholder in UAGC, but UA is certainly an interested party in making sure UAGC reaches a resolution acceptable to the Department.

Moreover, the Department should be assured by the fact that, under the APA (Attachment #1), Zovio, not UAGC or any other party, is responsible for pre-closing liabilities⁸ associated with Ashford. For example, Section 1.5 of the APA states that Zovio retains "all Liabilities to the extent arising from or in connection with the operation or conduct (whether by act or omission) of the University prior to the Closing Date" including "[l]iabilities in respect of any pending or threatened Action . . . to the extent such Action relates to such operation and use on or prior to the Closing Date." Among the excluded litigations is the pending action by the California Attorney General against Zovio and Ashford, which is on Schedule 3.22(a) (list of known litigation). Further, Section 9.1 provides strong indemnity for various breaches of any representation and warranty provided by Zovio.⁹ In addition to any other remedies, UAGC has representation and warranty insurance that covers breaches of those contract provisions (Attachment

⁷ For example, as Inside Higher Ed reported earlier this month, the University of North Carolina is in the process of creating its own online program management service for its constituent universities. The cost for doing so is estimated to be \$97 million and is expected to take five years. In fact, some referenced in the article suggest \$97 million underestimates the amount required for the project. See Suzanne Smalley, Inside Higher Ed, "UNC's \$97 Million Plan to Reach Adult Online Learners" (Dec. 9, 2021) located at <https://www.insidehighered.com/news/2021/12/09/unc-system-launch-ambitious-97-million-ed-tech-start> ("Ninety-seven million is a lot, but not when you hear that they're talking about 120 programs—that's less than a million dollars a program," said Phil Hill, an educational technology consultant and blogger. "The OPMs quite often invest several million per program ... They might be biting off more than they could chew. They might not realize just how much time and effort and money is needed to really get these programs running.").

⁸ There are a limited number of preclosing liabilities assumed by UAGC, as described in Section 1.4. Those liabilities largely relate to obligations to our current students.

⁹ Of note, the indemnity lasts a period of three years from the closing, with additional insurance policies (Attachment #2) which cover breaches related to education matters (for five years) and certain fundamental representations (for the full period of any applicable statute of limitations, plus 60 days).

The Honorable James Kvaal
December 17, 2021
Page 5

#2).¹⁰ Because UA is a signatory to the APA, UA will also benefit from these provisions once UAGC is integrated into UA.

* * * *

We appreciate your consideration and continued cooperation and look forward to hearing from you.¹¹ In the meantime, please let us know if you have questions or need further information.

Sincerely,



Robert C. Robbins, M.D.
President
University of Arizona

Paul G. Pastorek
President and CEO
University of Arizona Global Campus

John-Paul Rocznik
President and CEO
University of Arizona
Foundation

Attachments

cc: Lisa Brown, Esq.

¹⁰ There is \$45 million in total coverage, a \$25 million (primary) policy from Euclid Transactional LLC and \$20 million (excess) policy from Berkshire Hathaway Specialty Insurance.

¹¹ This letter discusses certain confidential information that would be exempt from disclosure under the Freedom of Information Act because it is within the scope of the exemption set forth in 5 U.S.C. § 552(b)(4) ("Exemption 4"). The disclosure of this information to the public, including through response to a FOIA request, would be harmful and prejudicial to the parties. If requested, UAGC and UA will provide a detailed written statement specifying the information we believe is covered by Exemption 4 and the grounds under Exemption 4 and other applicable law for denying access to the information or any portion thereof. If the Department receives a FOIA or other request for this information and concludes that the documentation is not exempt from release under Exemption 4 or other applicable law, we request that the Department notify us as soon as reasonably possible prior to any disclosure and in sufficient time to allow us to object to such disclosure and provide the Department the basis for our specific objections. We appreciate the Department's sensitivity to this matter and its cooperation in this regard.