

December 20, 2019

Emily A.A. Dow, PhD, Assistant Secretary of Academic Affairs
Maryland Higher Education Commission
6 North Liberty Street, 10th Floor
Baltimore, MD, 21201

Submitted via electronic mail to Emily.dow@maryland.gov

Re: 13B.01.03, *Classification of Nonpublic Institutions of Higher Education*

Dear Dr. Dow;

I am writing today on behalf of The Institute for College Access & Success in support of Maryland 13B.01.03, *Classification of Nonpublic Institutions of Higher Education*. The Institute for College Access & Success is a trusted source of research, design, and advocacy for student-centered public policies that promote affordability, accountability, and equity in higher education.

In the last several years, there has been a growing trend of for-profit institutions seeking to convert to nonprofit status- In part, it appears- to avoid complying with accountability metrics specific to the for-profit sector.¹ The federal gainful employment and 90/10 regulations put market-based safeguards in place to protect students by ensuring that programs do not require students to borrow amounts they will not be able to repay. In addition, the rule also ensures that schools are not solely dependent on revenues provided by federal loans and grants.²

There are serious questions regarding the governance structures these converted for-profit institutions have put in place. It is vital to ensure that the non-profit mission is being served and that revenues generated by the non-profit institution are not inuring to private parties or private shareholders. For example, Grand Canyon Education, Inc. (GCE) is seeking to rebrand the company as a third-party service provider to the newly formed non-profit Grand Canyon University (GCU), while continuing to direct the majority of revenue back to shareholders of the publicly traded GCE. On November 19, 2019, the Education Department wrote to GCU finding that:

“the Department has determined that GCU does not meet the operational test’s requirement that both the primary activities of the organization and its stream of revenue benefit the nonprofit itself. Rather, the materials that the Department has reviewed demonstrate that GCE and its shareholders – rather than Gazelle/GCU – are the primary beneficiaries of the operation of GCU under the terms of the MSA. This violates the most basic tenet of nonprofit status – that the nonprofit be primarily operated for a tax-exempt purpose and not substantially for the benefit of any other person or entity.”³

Another for-profit company, Zovio, is similarly seeking to transform itself into a service provider to Ashford University, the formerly for-profit college, while still collecting most of the the institution’s revenues. Zovio has disclosed that the Department of Education has placed a requirement that the University posts more than \$100 million letter of credit before approving the action, due to concerns about the stability of the institution.⁴ Accreditors have also placed requirements on Ashford’s conversion in an attempt to ensure that trustees do not have financial interests in Zovio.

Together, Ashford and GCU enroll almost 100,000 students in exclusively online programs across the country, including in Maryland. With the passage of 13B.01.03 Maryland has taken an important step to ensure that institutions in Maryland that seek to convert are meeting the traditional requirements of nonprofit status and that that no person or entity is benefitting from the earnings of its private non-profit colleges. The proposed regulations set forth in the Maryland Register at 13B.01.03 provide a clear reporting mechanism to ensure that these institutions are meeting this requirement.

While it is a positive sign that the federal Department of Education is taking action to protect students and ensure institutional integrity, we have also seen widespread rollbacks of for-profit college accountability under the Trump administration. These include the repeal of the gainful employment rule and the issuance of a deeply flawed borrower rule.⁵

We appreciate the steps that Maryland is taking to ensure that institutions seeking to be recognized as non-profit entities are meeting the requirements of that designation. These regulations will have the direct effect of better protecting students attending both private non-profit and for-profit colleges in Maryland.

We support the proposed Classification of Nonpublic Institutions of Higher Education as it is an important measure that will help to protect Maryland students and taxpayers while ensuring institutional integrity.

Please let me know if any additional information would be useful to you.

Sincerely,

W. Brett Robertson, Policy Analyst

The Institute for College Access & Success

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¹ Robert Shireman, September 22, 2015. *The Covert For-Profit: How College Owners Escape Oversight through a Regulatory Blind Spot*. The Century Foundation, <https://tcf.org/content/report/covert-for-profit/>

² The Institute for College Access & Success, August 2019. *What to know about the gainful employment rule*. https://ticas.org/wp-content/uploads/2019/08/what_to_know_about_GE_fact-sheet-1.pdf ; The Institute for College Access & Success, January 25, 2016. *Q & A on the For-Profit College "90-10 Rule"*.

<http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2016/01/Final-90-10-QA-Jan-25-2016.pdf>

³ U.S. Department of Education, November 6, 2019. *Letter to Brian Mueller re: Review of the change of ownership and conversion to nonprofit status of Grand Canyon University (OPE ID 00107400)*.

<https://www.documentcloud.org/documents/6548148-Grand-Canyon-University-Decision-on-CIO-11-06-19.html>

⁴ Hallie Busta, October 8, 2019. *Zovio: \$103M letter of credit required to spin off Ashford U*. Education Dive, <https://www.educationdive.com/news/zovio-103m-letter-of-credit-required-to-spin-off-ashford-u/564549/> ;

Lindsay McKenzie, October 8, 2019. *Ashford University Parent Company Weighs Sale*. Inside Higher Ed, <https://www.insidehighered.com/quicktakes/2019/10/08/ashford-university-parent-company-weighs-sale>

⁵ *Coalition letter from 57 organizations in support of repealing the 2019 borrower defense rule*. December 9, 2019, https://ticas.org/wp-content/uploads/2019/12/Coalition-Letter-on-BD-CRA_.pdf ; The Institute for College Access & Success, September 23, 2019. *Top 10 Ways the New Borrower Defense Rule is Worse for Borrowers*.

https://ticas.org/wp-content/uploads/2019/09/BD_Side-by-Side.pdf ; The Institute for College Access & Success, August 12, 2019. *What to Know About the Gainful Employment Rule*. https://ticas.org/wp-content/uploads/2019/08/what_to_know_about_GE_fact-sheet-1.pdf