University of Arizona Global Campus:

Critical Ethical and Legal Issues for Consideration

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GRAND CANYON INSTITUTE

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Image credit: New York Times (Ashford University); Wall Street Joural (University of Arizona)

Executive Summary

The acquisition of for-profit, online Ashford University by the University of Arizona (UA) raises a range of ethical and legal issues. Even if legal issues are proven to be moot, UA has given insufficient indication that it intends to invest financial resources to improve Ashford's poor academic and student services raising the question that the deal is motivated more by potential revenue and market share without regard for consequences for current and future students.

- Ashford University has a very low level of student success.
    - Ashford University has a very low graduation rate—most students drop out or transfer—and leave with outstanding federal loans and no degree.
    - The five-year student loan default rate was 47% in 2014.
    - It has been subject to numerous lawsuits—future liability if past practices do no change would now also fall on UA.
    - Its poor performance led to a formal letter of concern from its accrediting agency Western Association of Schools and Colleges Senior College and University Commission (WSCUC) in 2019.
- Ashford University relies primarily on adjunct faculty with a questionable level of academic rigor and integrity.
    - Only 4% of faculty are full-time and less than 10% of courses are taught by full-time faculty.
    - Only about 20 cents of each dollar in tuition presently goes to the faculty teaching courses.
    - The accreditor has noted shortfalls in faculty pay, excessive workload and inadequate faculty governance in its letter of concern.
- Ashford's enrollment has declined significantly in the last decade and its financial status is questionable despite what appears to be a high tuition, low-cost education model.
    - Zovio, Ashford's parent company, has a continued pattern of operating losses.[1]
- UA has been insufficiently clear in its priorities.
    - On one hand, the Ashford acquisition, with the plan to be branded as University of Arizona Global Campus (UAGC), has been discussed as a new revenue center, suggesting that the intention is not to improve Ashford but to pull about 5% of net revenues for UA priorities.
    - On the other hand, UA claims it will not tolerate Ashford's previous poor performance once acquired—yet has not committed to the financial

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Note: On November 18, 2018 2020 GCI provided a preliminary analysis for the Board of Regents done on an expedited timetable due to the timing of their meeting after Ashford's accreditor, the Western Association for Schools and Colleges Senior College and University Commission, gave conditional approval to the acquisition. Where findings have been correct it will be footnoted in this version. This version is more detailed and has additional information.

1 The November 18th analysis incorrectly noted the stock price as 1 cent. That is the par value not the market value of the stock. Zovio stock sells at less than $4 per share. The stock surged to just above $6 when the University of Arizona acquisition was announced in August, but the price has since fallen back to around where it was before the announcement—suggesting that investors have less optimism about how the deal will improve Zovio's profitability. Since Zovio's profitability is largely based on net revenues for University of Arizona Global Campus, it suggests investors see less likelihood of enrollment growth. https://www.marketwatch.com/investing/stock/zvo.

    investment to turn it around.
    - o About 70%–80% of revenues will be funneled back to its current owner Zovio[2], who has been responsible for the poor performance and will continue operating the institution post acquisition.
    - o Instead UA plans to continue UAGC's current faculty model and the faculty will not be part of UA faculty.
    - o UA will not include UAGC in its accreditation process with the Higher Learning Commission. Rather, it plans to keep it separately accredited with the WASC Senior College and University Commission
- The acquisition raises critical questions regarding whether UA and by extension the Arizona Board of Regents are violating the credit and stock clauses of the Arizona Constitution with this transaction.

The 15-year Strategic Services Agreement between Zovio, UAGC, and the Board of Regents/UA has a possible 7-year break point and designates Key Performance Indicators (KPI). The public version does not provide adequate details on them.[3] GCI recommends the KPI include:

- Benchmarks during the next 7 years for reducing the 5-year student loan default rate to no more than twice the current rate of UA and increase the portion of loans repaid for UAGC to at least half that of UA. Currently the default rate appears to be four times that of UA.[4]
- Benchmarks during the next 7 years for improving 8-year student completion rates so that they are at least 60% of UA's and cutting the withdrawal rate to no more than 25%. Current completion rates are 40% of UA's and nearly half of students withdraw.[5]
- UAGC within the next three years expend a minimum of 30% of net tuition and fees on instruction, up from the current 19% as part of its plan to address these goals. By year 7 faculty investment should be at least 35% of net tuition and fees.

2 Note the analysis for the Regents cited 19.5% as the share of net revenues above what Zovio will receive. From the purchase agreement Zovio also is paid for its service costs as well. Collectively it will likely represent about 70%-805 of UAGC net revenues. More details later in the report

3 See Strategic Services Agreement, December 1, 2020, https://www.sec.gov/Archives/edgar/data/1305323/000130532320000070/ex-101xstrategicservic.htm

4 Analysis from Kevin Miller of The Century Foundation suggests currently Ashford's five-year default rate is 26% more than four times UA's 6%

5 Analysis from Kevin Mller of The Century Foundation suggests Ashford's current 8-year completion is 23% compared to 61% for UA—so it would need to rise to 36%. Ashford's current withdrawal rate is 46%, so it would need to be cut in half

Introduction

In early August, the University of Arizona (UA) announced plans to acquire Ashford University for one dollar and hire Zovio, its then owner, to continue operating nearly all aspects of the university for 15 years.[6] Negotiations appeared to have commenced in March during the pandemic. This acquisition was outside of any long-term strategic plan for UA and has a number of similarities to Purdue Global Campus—the rebranded acquisition by Purdue University of for-profit Kaplan University in 2017. Purdue has seen operating losses since the acquisition[7]—but this deal is structured to insulate UA from operating losses. The deal closed on December 1, 2020. The U.S. Department of Education (USDoE) still must determine whether or not it considers the new entity a for-profit or nonprofit which impacts the manner in which it will be regulated in order to receive Title IV funds (student loans and Pell grants). They may expect a letter of credit of at least $30 million from UA to award nonprofit status.

Ethical Issues Considered

Several ethical issues should be considered in relation to the acquisition of Ashford University. Issues include the financial practices by the parent company, student performance and retention, reliance on adjunct faculty, and it appears that the deal will perpetuate emphasis on student recruitment rather than retention. Importantly, it is unclear if UA intends to invest resources in improving the quality of education provided.

Ashford University and Zovio

Ashford University was a for-profit online institution owned and operated by Zovio, a private holding company that is traded on NASDAQ Zovio, formerly called Bridgepoint Education, acquired what had originally been a Catholic women's university in Iowa in 2005 and renamed it Ashford University. It now offers completely online undergraduate and graduate degrees.[8] In 2011 enrollment topped 80,000 FTE students. Before the pandemic it had dropped to about 35,000.

Ashford University has a very low level of student success

Ashford University offers a lower quality university experience relative to UA. Documentation related to its pending acquisition provides no indication that UA intends to invest in improving the quality of education provided to students. Rather, the focus seems to be on expanding UA's presence in the online higher education market while creating an additional revenue source, without apparent concern for the quality of education provided. This has potentially serious implications for the UA's brand. Key issues identified with

6 Leingang, Rachel (2020), "University of Arizona looks to jump-start online enrollment with purchase of for-profit college," *Arizona Republic*, Aug. 3, https://www.azcentral.com/story/news/local/arizona-education/2020/08/03/ua-seeks-buy-ashford-university-boost-online-enrollment/5575126002/

7 Newton, Derek (2019), "Early Troubles in The Purdue, Kaplan Marriage," *Forbes*, Aug. 31, https://www.forbes.com/sites/dereknewton/2019/08/31/early-troubles-in-the-purdue-kaplan-marriage/?sh=79f78a1a670d.

8 Doyle, Charlotte (2019), "Ashford University Lawsuit, History and My Disturbing Experience as a 2018 Graduate," February 11, https://owlcation.com/academia/Confessions-of-an-Ashford-University-Student-The-Good-The-Bad-and-the-Ugly.

Ashford University's performance include:

- o Ashford University has a very low graduation rate—most students drop out or transfer—and leave with outstanding federal loans and no degree.
- o It has been subject to numerous lawsuits—future liability if past practices do no change would now also fall on UA.[9]
- o Its poor performance led to a formal notice of concern from its accrediting agent WSCUC in 2019, with WSCUC clearly restating that accreditation concerns are ongoing in its letter providing conditional approval of the UAGC deal.[10]

Ashford has very low levels of successful student completion based on data from CollegeFactual.com—which seems to be based on and consistent with data from the Integrated Postsecondary Education Data System (IPEDS) of the National Center for Educational Statistics.[11] Table 1 compares Ashford's performance for first-time, full-time students as well as returning full-time students.[12] Ashford ranks in the bottom 10 percent of colleges and universities (about 3,500) tracked by CollegeFactual.com.

Table 1

Graduation Rates for Ashford University Students

Class of 2015	First-Time Students Graduation Rate			Returning Students Graduation Rate		
	Ashford	National Avg.	Percentile out of 100	Ashford	National Avg.	Percentile out of 100
4 years	1%	34.1%	9[13]			
6 years	9.5%	45.%	3	25.1%	53.8%	10
8 years	9.8%	47.4%	3	26.1%	55.1%	9

The Eller Faculty analysis from June found typical debt was about $36,000 per student.[14] Kevin Miller of The Century Foundation found a median debt level of $34,375 per graduate compared to $20,000 for UA graduates. SEC filings indicate that that the 3-year default rate on federal student loans by Ashford students is about 40% higher than the national

9 The preliminary version for the board of Regents incorrectly stated the University would assume all legal liabilities. The purchase agreement (see pages 3 to 5) appears to insulate the University from liability based on Ashford's past practices. However, a recruitment over retention business model remains likely for UAGC--which could open to future liability.

10 See letter from accreditor: https://wascsenior.box.com/shared/static/wtj5m01wlm7m277yjbs1qzp92p1sb36j.pdf

11 See Retention and Graduation at IPEDS for Ashford University: https://nces.ed.gov/ipeds/datacenter/institutionprofile.aspx?unitId=154022&goToReportId=6

12 Data for part-time students did not appear to be reliable. Whereas tracked student numbers for full-time students was 11,255 and 45,761 for first-time and returning students, respectively, part-time tracked data was for 7 and 3 students, respectively.

13 This percentile was out of a small total institutional base of 2,200—but seems odd for 1%. One percent is also reported at the IPEDS website for Ashford.

14 Mergenthaler, Rick, Nathan Podsadoff, Hope Schau, Bin Zhang, David Brown, and Tiemen Woutersen (2020), Eller School of Business Faculty Letter to Board of Regents, President Robbins, Dean Goes and Provost Folks, June 19.

average (14% compared to 10%).[15] However, in a 2018 General Accounting Office report it noted many schools encourage student loan forbearance where interest accumulates but payments are temporarily halted. This artificially reduces reported 3-year default rates.[16]

Table 2 indicates that as of 2014, Ashford University ranked 10th nationally in total accumulated student debt on accumulated federal loans with $5.9 billion covering 205,000 borrowers, despite its relatively short time as a growing for-profit enterprise. Notably, it ranked ahead of Arizona State University Tempe campus whose students had $4.9 billion in federal student loan debt among 159,000 borrowers. The difference exists because ASU students are far more likely to graduate and repay their debt. The 5-year default rate for the 2009 cohort at Ashford was 47% with only 2% of their balance on average repaid. By contrast the default rate at ASU was 17% with 12% repaid.[17] The 2009 cohort enrolled in the Fall of 2005 when Ashford in its current form was just beginning. UA was not among the top 25 institutions with student debt so was not listed in the table. Kevin Miller of The Century Foundation, using institution reported data, found the current five-year default rate to be 26% compared to only 6% for UA.[18]

Table 2

Selected Universities with High Levels of Student Indebtedness

Institution	Total Debt (billions)	Total Borrowers	5-Year Default Rate for 2009 Cohort (2014)	% Balance Repaid in 2014
University of Phoenix	$35.5	1,192,000	45%	1%
Ashford University	$5.9	205,000	47%	2%
Grand Canyon University	$5.9	146,000	36%	0%
Arizona State University	$4.9	159,000	17%	12%
Ohio State University	$4.4	133,000	12%	19%

Source: US Treasury Tabulations of 4% of National Student Loan Data System Sample published in Table 5 of 2015 Brookings Papers.

Not surprisingly, Ashford has been the subject of numerous lawsuits. As the Eller Faculty analysis noted (Antelope is Ashford and Zebra is Zovio in the following text):

For example, the California attorney general filed a lawsuit with Antelope University

15 For National Federal Student Loan cohort default rates—see U.S. Dept. of Education, "Student Loan Default Rates," https://www.ed.gov/category/keyword/student-loan-default-rates. Ashford indicates three-year cohort default rates for 2014, 2015 and 2016 of 14.9%,13.5% and 13.7%, respectively. See page 94 of Zovio Year Ending Dec. 31, 2019 Annual Report to Securities and Exchange Commission, https://s23.q4cdn.com/742949744/files/doc_financials/2019/q4/0f892ec2-c65f-4fb3-bbb1-62ea48894e4d.pdf.

16 United States General Accounting Office (2018), "Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates," April, GAO-18-163, https://www.gao.gov/assets/700/691520.pdf.

17 Looney, Adam and Constantine Yannelis (2015), "A Crisis in Student Loans? How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults," Brookings Papers on Economic Activity, September, https://www.gao.gov/assets/700/691520.pdf.

18 Miller, Kevin (2020), Memo "Ashford University's student outcomes and instructional spending," Oct. 6. Miller's numbers seem to be systematically lower than the Brookings Papers. This could be due to a stronger economy at the time and/or differences in methodology. Miller's data is from IPEDS which is reported by Institution, whereas Brookings was directly from a national database of borrowers

> in 2017, which is ongoing to our knowledge. In 2014, Zebra settled a lawsuit with the State of Iowa for $7.25 million. In 2016, the Consumer Financial Protection Bureau levied an $8 million penalty on Zebra and required them to refund $23.5 million in student loans.[19]

While the purchase agreement seems to insulate UA from liabilities from past actions. Future lawsuits for poor service to students would fall on UA as the new operator.

In July 2019 Ashford's accrediting agency issued a formal notice of concern which stated:

> The Formal Notice of Concern is being issued due to the Commission's longstanding concerns regarding Ashford University's student persistence and completion rates and performance on other student success metrics. The University is in danger of being found out of compliance with Standard 2 unless significant improvements are realized in the near future.[20]

In September 2020, Veterans Education Success, a nonprofit that advocates on behalf of veterans, issued a memorandum to the Federal Trade Commission detailing numerous possible deceptive and fraudulent practices by Ashford University in recruiting veterans that could violate federal law.[21]

Ashford University relies primarily on adjunct faculty

Ashford University does not detail on its website anything about its faculty except a bit of information found in a blog area that is quite challenging to locate. In its 2019 Annual Report to the Securities and Exchange Commission for the year ending Dec. 31, 2019, Zovio indicates Ashford employed 100 full-time faculty and 2,509 active adjunct faculty, which means less than 4% of faculty are full-time.[22] At most 12% of courses are taught by full-time faculty, though that figure was based on 215 full-time faculty employed for fiscal year 2018.[23] The current portion of classes taught by full-time faculty is likely far less than 10% because Ashford eliminated half their full-time faculty since then. Since the highpoint was reached for an accreditation visit and half the full-time faculty have since been eliminated, critical integrity issues are raised.

By their financial information, Zovio spends significantly more on marketing than it does on faculty compensation. The accreditor report indicates that about 36% of expenses were in the form of "Admissions Advising & Marketing"—which is technically all marketing related.[24] By contrast IPEDS indicates that instruction expenses were only 21%

19 Mergenthaler, Rick, Nathan Podsadoff, Hope Schau, Bin Zhang, David Brown, and Tiemen Woutersen (2020), Eller School of Business Faculty Letter to Board of Regents, President Robbins, Dean Goes and Provost Folks, June 19.

20 Studley, Jamienne S.-President (2019), Letter from Western Association of Schools and Colleges to Dr. Craig Swenson President of Ashford University, July 12.

21 Veterans Education Success (2020), "Memorandum Regarding Ashford University to the Federal Trade Commission," Sept. 28, https://vetsedsuccess.org/our-memorandum-to-the-federal-trade-commission-regarding-ashford-university/.

22 See page 10 of Zovio Annual Report to Securities and Exchange Commission for the year ending Dec. 31, 2019, https://s23.q4cdn.com/742949744/files/doc_financials/2019/q4/0f892ec2-c65f-4fb3-bbb1-62ea48894e4d.pdf.

23 See page 18 of "Report of the WSUC Team: Accreditation Visit for Reaffirmation to Ashford University," April 13-15, 2019.

24 See page 20 of "Report of the WSUC Team: Accreditation Visit for Reaffirmation to Ashford University," April 13-15, 2019.

of expenses for 2018.[25] This translates to about 19% of net tuition and fees which is consistent with data from Miller of The Century Foundation.[26] Miller notes that for-profit online institutions typically spend 50% more on instruction than Ashford, which is still far lower than other universities.

The accreditors' notice of concern required the institution to respond to seven issues, two of which involved faculty:

> Faculty Workload –Ashford should review its current workload and compensation practices for full-time and associate faculty to determine whether they are appropriate and equitable. (CFRs 2.1, 3.1, 3.2, 3.3)
>
> Faculty Governance – The institution should examine whether associate faculty representation and participation in faculty governance and efforts to evaluate educational effectiveness are appropriate and adequate. (CFRs 2.4, 3.1. 3.10)[27]

The implication of the first is that faculty are underpaid with an excessive workload. The second indicates a lack of formal faculty input at the institution.

Indeed.com provides 709 reviews from employees or former employees in faculty positions. The snapshot below raises concerns.[28] There are more positive reviews as well—but from the responses it appears to be a canned curriculum (the course design is pre-set independent of the faculty member teaching the course) and an environment where students are under prepared and under supported—even despite help from faculty. Professional development is highly questionable. This raises questions about the academic integrity of the institution that UA is lending its brand to.

The following are several reviews by Ashford University faculty:

Uniformed course work for all instructors
Associate Faculty (Current Employee) - San Diego County, CA - February 19, 2018
Requires a lot of time for little pay and no praise; hyper critical supervisors from people who are not credentialed teachers themselves; supervisors do not look at student feedback, just the length of your responses to students

Remote work - convenient
Associate Faculty (Current Employee) - Remote - January 25, 2018
Convenient and self-paced. No advancement for associate positions and almost no communication by superiors (I don't even know who mine is after 7 years here).

Faculty expectations very demanding; Compensation for hours worked not adequate
Online Associate Faculty (Former Employee) - San Diego, CA - May 18, 2017

25 See Finance at IPEDS for Ashford University: https://nces.ed.gov/ipeds/datacenter/institutionprofile.aspx?unitId=154022&goToReportId=6

26 Miller, Kevin (2020), Memo "Ashford University's student outcomes and instructional spending," Oct. 6.

27 Studley, Jamienne S.-President (2019), Letter from Western Association of Schools and Colleges to Dr. Craig Swenson President of Ashford University, July 12.

28 "Ashford University Employee Reviews for Faculty," https://www.indeed.com/cmp/Ashford-University/reviews?fjobtitle=Faculty&fcountry=US.

Faculty expectations are very labor intensive. There is a reason that you are only allowed to teach one class at a time. One course requires over 24 hours per week in labor. With courses being five weeks, students really struggle with trying to keep up.

Ashford is not education
Associate Faculty-Online (Former Employee) - Online - May 13, 2017
Courses are more suitable for high-school sophomores. Ashford is about profit, not education. Incompetent department chairs not understanding content and rigor for legitimate course offerings.

Students have every right to expect their tuition dollars are primarily supporting instruction, yet as noted below, Ashford spends an extremely low percentage on instruction compared to other universities, including the University of Arizona (UA percent is adjusted to remove research expenditures since they are independently funded). All other institutions are primarily teaching institutions with very little research expenditures. Institutions were chosen for comparable size or being among the largest teaching-oriented institutions in their category (BYU and Quinnipiac among private and San Diego State and Weber State among public in somewhat close proximity). All these other institutions have facility costs that Ashford as an online entity would not. Miller of The Century Foundation notes that for profit online institutions typically spend 50% more on instruction than Ashford (about 30% compared to 20%), which is still far lower than other universities.[29]

Table 3
Portion of Expenditures on Instruction for Ashford and Selected Universities

Institution	FTE Enrollment (2018-2019)	Percent Expenditures on Instruction (Fiscal Year 2018)
Ashford University	31,774	21%
University of Arizona	42,681	44%
Brigham Young University	33,908	60%
Quinnipiac University	11,320	75%
San Diego State	32,708	35%
Weber State	18,252	50%

Source: Integrated Postsecondary Education Data System. For University of Arizona-the 28% on research was removed to calculate percent on instruction.

Ashford's enrollment has declined significantly in the last decade with questionable financial viability

According to the *Wall Street Journal*, Ashford's enrollment has declined substantially from

29 Miller, Kevin (2020), Memo "Ashford University's student outcomes and instructional spending," Oct. 6.

85,000 in 2011 to 35,000 before the pandemic struck in 2020.[30]

According to its 2019 accreditation report Ashford University has run a net operating margin of about $60 million each year with its corporate owner able to pull from that.[31] Since the corporate owner has a fiduciary responsibility to its stockholders, it is hard to understand how a $60 million margin translates into a corporate loss—when owning Ashford appears at least until mid-2019 to be the only activity of the corporate owner. In 2018, for instance, restructuring and impairment losses amounted to $8 million, though 2016 had significant legal settlement costs of $33 million and 2019 had significant severance costs of $19 million related to reducing employees.[32]

Zovio/Bridgepoint Education has experienced fairly consistent operating losses as stated in SEC annual filings displayed in Table 4.[33]

Table 4

Zovio/Bridgepoint Education Financial Performance 2016–2019

	2019	2018	2017	2016
Net Revenue	$417.8 million	$443.4 million	$475.1 million	$527.1 million
Expenses	$474.4 million	$447.4 million	$468.7 million	$567.3 million
Operating Income (loss)	($56.6 million)	($4 million)	$6.4 million	($40.2 million)

Sources: Zovio SEC Annual Report 2019, Bridgepoint Education SEC Annual Report 2017accessed at https://ir.zovio.com/financials/.

Revenue dispersions under purchase agreement likely encourage recruitment not retention

The Purchase Agreement includes “Minimum Residual Amounts.” The Strategic Services Agreement which was released after the sale essentially mirrors the Purchase Agreement.[34]The “Minimum Residual Amounts” are essentially guaranteed margins for UA unless it sets tuition and fee amounts that lead to a loss of net revenue of more than 2% in which case the minimum residual amount is reduced dollar for dollar with the loss of net revenue.[35] However, it can also be reduced if UA were to increase operating costs beyond base levels by more than 2% per year—such as by improving the amount spent on instruction.[36]

The minimum residual amount varies in the different years of the 15-year agreement are

30 Korn, Melissa (2020), “University of Arizona to Acquire Ashford University in Online Push,” The Wall Street Journal, Aug. 3, https://www.wsj.com/articles/university-of-arizona-to-acquire-ashford-university-in-online-push-11596452400.

31 See page 20 of “Report of the WSUC Team: Accreditation Visit for Reaffirmation to Ashford University,” April 13-15, 2019.

32 Zovio Annual Financial Reports, selected years, Zovio Inc. - Financials

33 Zovio acquired two smaller entities during 2019. Prior years include only ownership of Ashford and overall corporate operations.

34 See Strategic Services Agreement, December 1, 2020, https://www.sec.gov/Archives/edgar/data/1305323/000130532320000070/ex-101xstrategicservic.htm

35 Purchase Agreement 4.3 “Tuition and Discounts,” pp. 98-99 of 340.

36 Purchase Agreement 1.83 “Priority Cost Amount,” p. 84 of 340.

displayed in Table 5.[37]

Table 5

Minimum Residual Amounts for Ashford Deal

Years	Minimum Residual Amount (millions)
1	$0
2	$12.5
3–5	$25
6–15	$10

Section 5.1 of the Purchase Agreement establishes payment priority:

1. Payment costs of UA (namely faculty)[38]
2. Service Fees to Zovio which covers both direct cost charges and a participation fee which is normally 19.5% of net revenues.

If these do not allow coverage of the minimum residual amount, then Zovio's receipts are reduced based on section 5.5.[39]

UA is hiring Zovio to provide transational services along with the following services:[40]

1. Recruiting
2. Student Financial Aid, Advising and Collection Services
3. Student Program and Retention Advising
4. Institutional Support
5. Information Technology
6. Support Services for Academic (including the Learning Management System for course delivery & the library)

Based on this list, U A is only taking control of the faculty—but it is not changing the faculty model which represents only 21% of Ashford's costs based on IPEDS. GCI estimates the expense breakdown using the 2018 fiscal year accreditation visit financial breakdown and IPEDS data which indicated total Ashford costs of $370 million and $60 million in net gain based on net revenue of $430 million.[41]

GCI foresees two likely scenarios.

Ashford has been charging a premium price at $510 a credit hour with about an average discount rate of 25% based on the accrediting agency site visit report. That means a typical 3-credit course costs $1,150 for the average student. This is still higher than many of Ashford's competitors. The discounts may primarily go to agreements with employers

37 Purchase Agreement 1.70 "Minimum Residual Amount," p. 83 of 340.

38 GCI has an unconfirmed report that the transition document will allow Zovio to also oversee faculty hiring for the first three years. If accurate, that would greatly reduce any likely near terms change to the faculty model.

39 Purchase Agreement 5.1 "Payment Priority," p.102 of 340 and 5.5 "Certain Adjustments to Services Fees," p. 103 of 340.

40 See Exhibit B Description of Services of Asset Purchase and Sale Agreement.

41 See page 20 of "Report of the WSUC Team: Accreditation Visit for Reaffirmation to Ashford University," April 13-15, 2019.

so are possibly not accessible to many students. Below is how Ashford compares with some other institutions based on book-cost per credit hour since discount information on the other institutions is not readily available.

Table 6

Credit Hour Cost for Ashford and Similar Universities

Institution	Cost per Credit Hour
Ashford University	$510
Arizona State University Online (resident)	$445–$565
Arizona State University Online (nonresident)	$541–$661
University of Phoenix	$398
Grand Canyon University	$470
Purdue Global (Kaplan)	$371
Southern New Hampshire University	$320

Source: Sokol, Ariel memo to The Century Foundation Oct. 6, 2020, ASU online tuition calculator for Organizational Leadership and Management degrees.

Scenario 1: UAGC acts proactively to stem losses of enrollment. The rebranding of Kaplan as Purdue Global only slowed but did not stop enrollment declines.[42] Tuition rates are decreased and/or scholarships increased leading to a loss of revenue of 20% if no enrollment change occurs. But the change leads to a 10% increase in student credit hours resulting in a net loss of 10% of revenue. This scenario is also consistent with no change in tuition or scholarships and a 10% loss in enrollment.

Scenario 2: UAGC maintains 2018 levels of enrollment due to the perceived strength from rebranding of Ashford University as part of the University of Arizona. GCI assumes this occurs in the second full year to demonstrate how the “minimum residual amount” functions.

The same service costs for Zovio are used in both scenarios based on what GCI estimates their equivalent costs to be in 2018 plus the participation fee. GCI presents two versions of faculty costs. In the first, faculty costs are unchanged. Keep in mind that faculty are undercompensated and overworked based on the accrediting agency’s report. In the second version of faculty costs rise by a $40 million annual investment by UA to reduce use of part-time faculty and reduce workloads and improve compensation. This change would still leave faculty investment below what it should be based on revenues, but would at least place it on par with other for-profit online universities as noted in Miller’s Century Foundation analysis (see Table 3). However, such an increase would primarily come out of the minimum reserve amount (which GCI assumes cannot go below zero).

Under each scenario Zovio receives 69% to 79% of net revenue for UAGC. In Scenario 1, there is no residual for the University. In Scenario 2, UA receives either zero or the minimum residual. **During the 15-years of the agreement, UA is unlikely to receive more than the minimum residual amount based on this analysis.**

42 McKenzie, Lindsay (2020), “Unpacking the Arizona-Ashford Deal,” *Inside Higher Ed*, Sept. 15, https://www.insidehighered.com/news/2020/09/15/unpacking-university-arizona%E2%80%99s-deal-ashford.

Table 7
Two Scenarios for UAGC

	Scenario 1 (millions)	Scenario 1 Faculty Fix (millions)	Scenario 2 (millions)	Scenario 2 Faculty Fix (millions)
Net Revenue	$387	$387	$430	$430
Minimum Reserve Amount	$12.5	$12.5	$12.5	$12.5
Priority 1: UA Costs	$80	$120	$80	$120
Priority 2: Zovio Direct Costs	$290	$290	$290	$290
Priority 2: Zovio Participation Fee 19.5% of Net Revenue	$75	$75	$84	$84
Total Costs (Priority 1 + 2)	$445	$485	$454	$494
Minimum Reserve Amount	$0 (adjusted)	$0 (adjusted)	$12.5 (not adjusted)	$0 (adjusted)
Reduction to Zovio from Priority 2	($58)	($98)	($36.5)	($64)
Portion of Revenue to Zovio	79%	69%	78%	72%

Zovio can improve its share by having more success with marketing/recruitment or by improving retention. The current Ashford/Zovio model is based on marketing/recruitment, not retention. The purchase agreement provides no added incentive to prioritize retention; consequently, UA runs the risk that UAGC will be a low retention, high student loan default institution that harms its brand far more than the very modest residuals it accrues.

The Strategic Services Agreement designates Key Performance Indicators (KPI), but the public version does not provide adequate details on them.[43] GCI recommends the KPI include:

- Benchmarks during the next 7 years for reducing the 5-year student loan default rate to no more than twice the current rate of UA and increase the portion of loans repaid for UAGC to at least half that of UA.[44]
- Benchmarks during the next 7 years for improving 8-year student completion rates so that they are at least 60% of UA's and cutting the withdrawal rate to no more than 25%.[45]
- UAGC within the next three years expend a minimum of 30% of net tuition and fees on instruction, up from the current 19% as part of its plan to address these goals. By year 7 faculty investment should be at least 35% of net tuition and fees.

UAGC should publicly release these figures annually along with clear indications of how UAGC will make progress. If after 7 years benchmarks have not been met and there is

43 See Strategic Services Agreement, December 1, 2020, https://www.sec.gov/Archives/edgar/data/1305323/000130532320000070/ex-101xstrategicservic.htm

44 Analysis from Kevin Miller of The Century Foundation suggests currently Ashford's five-year default rate is more than four times UA's—so it would need to be cut in half.

45 Analysis from Kevin Mller of The Century Foundation suggests Ashford's current 8-year completion is 23% compared to 61% for UA—so it would need to rise to 36%. Ashford's current withdrawal rate is 46%, so it would need to be cut in half.

no clear likelihood of meeting them soon thereafter, UA should exit the Strategic Services Agreement even though it may require a payoff to Zovio.

Legal Issues Considered

Possible violations of the Credit and Stock Clauses of the Arizona Constitution

The Credit Clause of the Arizona Constitution notes that the State of Arizona and its subdivisions shall never "give or loan its credit in the aid of…any individual, association, or corporation."[46]

The Stock Clause prohibits the State of Arizona or any of its subdivisions from becoming "a subscriber to, or a shareholder in, any company or corporation, or…a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state."[47]

The Credit Clause could be violated if to retain eligibility for Title IV funds (essential for UAGC) the USDoE requires the typical letter of credit valued at 10% to 25% of expected Title IV funds to be accessed by its students. Title IV funding can be no more than 90% of a for-profit university's revenue. Title IV funds represent about 75% of Zovio's revenues as guaranteed student loans and Pell grants.[48] Zovio also reports that 27.4% of students are veterans and that Veterans Affairs assistance such as under the GI Bill does not count toward the 90% limit on Title IV funds.[49]

In an ownership transfer USDoE would normally require a letter of credit from UA valued at between $30 million and $80 million. If this deal is submitted to the USDoE under the Trump Administration, it is likely to get a pass. However, the deal would receive much closer scrutiny under the Biden Administration, which has the capacity to revise determinations regarding UAGC, including its letter of credit obligations, the terms of its participation in federal funding programs, and whether it qualifies as a "nonprofit" school under the Higher Education Act. It is likely that the rush to get the deal consummated as soon as possible is related to the greater risk under the Biden Administration.

UA has also gone to great lengths to try and maneuver around the Stock Clause as well. It is clear from reading the purchase agreement, this is UA (and therefore the Board of Regents) that is buying Zovio for $1. However, technically UA has tried to create the appearance of a different buyer through the Law College Association of the University of Arizona (LCA), which in October was replaced in legal documents with the University of Arizona Foundation.(UAF).[50]

46 Ariz. Const. Art. IX, Sec. 7.
47 Ariz. Const. Art. IX, Sec. 7.
48 See 90/10 Rule on p. 94 of Zovio's SEC Annual Report for Year ending Dec. 31, https://s23.q4cdn.com/742949744/files/doc_financials/2019/ar/20200318-Zovio-2019-Annual-Report_Complete.pdf.
49 See 90/10 Rule on p. 15 of Zovio's SEC Annual Report for Year ending Dec. 31, https://s23.q4cdn.com/742949744/files/doc_financials/2019/ar/20200318-Zovio-2019-Annual-Report_Complete.pdf.
50 University of Arizona Foundation, https://uafoundation.org/.

UAGC is set up as a single member corporation—that single member being not the University, but the UAF—which is a nonprofit corporation separate from UA whose sole purpose has been to raise and manage donations for the UA.

While UAF has the authority to dissolve or liquidate UAGC, it has no say according to UAGC's articles and bylaws on appointing directors of UAGC or approving any major corporate transaction. Furthermore, UA has an indemnification agreement that indicates both that the articles and bylaws will be amended prior to the closing with Zovio. The agreement stipulates that initially a majority of independent voting members (including one selected by UAF) and a minority of university-appointed members will compose UAGC's board of directors. Once the board is established it will self-perpetuate thereafter.

President Robert C. Robbins stated, "There will be a separate academic affiliation agreement between [UAGC] and [the University] where we will provide, in terms of governance, a newly constituted governing board for [UAGC]. We envision a new nine-person board of which four members will be from [the University] or [University]-affiliated. We've talked about even potentially having Regents take one of those board seats on this new board. And then five independent board members that we will get to select and empower."[51]

In other words, UAF is a fairly impotent sole corporate member and UA will hold effective control over UAGC.

Conclusion

The Grand Canyon Institute provides this analysis for consideration by the Arizona Board of Regents and the public given the variety of ethical and legal issues related to UA's acquisition of Ashford University. As the transaction has occurred with a rushed timetable without adequate public scrutiny, key progress indicators, including those identified by GCI, should be public along with UAGC's progress toward meeting them.

51 See August 20, 2020 Special Meeting of the Arizona Board of Regents (available at https://www.youtube.com/watch?v=WLJ-9TyYp-4, starting at 31:20).

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The Grand Canyon Institute, a 501(c) 3 nonprofit organization, is a centrist think tank led by a bipartisan group of former state lawmakers, economists, community leaders and academicians. The Grand Canyon Institute serves as an independent voice reflecting a pragmatic approach to addressing economic, fiscal, budgetary and taxation issues confronting Arizona.

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