



FEB 25 2022

Dr. Mikhail Brodsky
President
Lincoln University
401 15th Street
Oakland, CA 94612

Sent via UPS
Tracking # 1Z 37X 7Y3 01 0378 0887

OPE ID: 00697500

Re: Affirmation of Denial of Recertification Application to Participate in the Federal
Student Financial Assistance Programs

Dear Dr. Brodsky:

This is in response to Lincoln University's ("Lincoln's") submissions dated December 21, 2021, and January 28, 2022, requesting that the Department of Education ("Department") reconsider and rescind its December 10, 2021, decision to deny recertification ("Denial") to Lincoln. The Department thoroughly and carefully reviewed the materials Lincoln submitted and by this letter advises the institution that the Denial is hereby affirmed and is now the final decision of the Department.

In the December 2021 submission, you, in your capacity as president, stated that Lincoln was not questioning the justification and propriety of the Department's actions; acknowledged that the withdrawal from accreditation by the Accrediting Council for Independent Colleges and Schools ("ACICS") while ACICS was still its primary accreditor was a mistake; denied that the withdrawal from ACICS while under show cause was voluntary; explained that Lincoln could not move out of its show cause status with ACICS without closing its Doctor of Business Administration ("DBA") program, which would harm Lincoln and its students; asserted that ACICS's conduct with respect to the institution had been manipulative and vindictive; and requested that the Department impose some penalty other than loss of Title IV, HEA program eligibility.

In the January 28, 2022 supplemental submission, Lincoln's attorney, however, took a different approach, and blamed the Department for the institution's loss of Title IV, HEA program eligibility, rather than attribute the loss to the institution's decision to withdraw from ACICS accreditation prior to receiving the Department's approval of the Western Association of Schools and Colleges ("WASC") Senior College and University Commission ("WSCUC") as its primary accreditor, and to Lincoln's failure to remain in good standing with ACICS until the change in primary accreditor was approved. Lincoln has even gone so far as to argue, baselessly, that the Department has acted in violation of the applicable laws and regulations.

In the January 28, 2022 submission, Lincoln first contends that the Department's Denial is based on an inaccurate conclusion regarding the timing of Lincoln's request to make WSCUC its primary (and

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only) accreditor. This is not correct. The Department's Denial is based on the fact that Lincoln no longer qualified as an eligible institution for purposes of the Title IV, HEA programs when it withdrew from its ACICS accreditation on March 15, 2021, while ACICS was its primary accreditor. Because Lincoln was on show cause with ACICS at the time, not only did that action render Lincoln an ineligible institution for purposes of the Title IV, HEA programs, but it also meant that Lincoln could not qualify as an eligible institution for 24 months afterward (through March 15, 2023). *See* 34 C.F.R. § 600.11(c)(2). The timing of Lincoln's March 17, 2021 e-app requesting that WSCUC be approved as the institution's primary accreditor was not the reason why Lincoln could no longer qualify as an eligible institution. Further, when Lincoln withdrew from its ACICS accreditation it did so with full knowledge that ACICS was its primary accreditor for purposes of the Title IV, HEA programs and that this action would result in a loss of institutional eligibility.

The Department has never contended that it was not aware that Lincoln wished to obtain the Department's approval to make WSCUC its primary accreditor. The record shows that on July 28, 2020, the Department sent Lincoln an email informing the institution that it would need to follow a two-step process, involving two separate electronic applications (e-apps), in order to obtain approval for WSCUC as Lincoln's primary accreditor. Lincoln was first required to submit an e-app requesting that the Department approve WSCUC as its secondary institutional accreditor. After the Department approved that e-app, Lincoln was then required to submit a second e-app requesting that the Department approve the change in primary accreditor from ACICS to WSCUC. The Department also advised Lincoln via email on July 28, 2020 that relinquishing its ACICS accreditation prior to the Department's approval of WSCUC [as the institution's primary accreditor] would result in the institution's loss of Title IV, HEA program eligibility. The Department had not approved even the first e-app when it learned, through a notification from ACICS, that ACICS had placed the institution on show cause on August 22, 2020.

After receiving the August 22, 2020 show cause letter from ACICS, the Department sent Lincoln an email on August 28, 2020 notifying the institution that while the Department would process Lincoln's pending e-app to approve WSCUC as its secondary accreditor, Lincoln could not submit an e-app requesting that the Department approve WSCUC as its primary accreditor until the institution was in good standing with ACICS. The Department reminded Lincoln not to drop its ACICS accreditation prior to the Department's approval of WSCUC as its primary accreditor. On August 28, 2020, Lincoln responded with an email in which it stated: "Based on the contents of the letter [ACICS August 22, 2020 Show Cause Letter] that I just learned about, keeping ACICS as our primary accreditor until we clean it up with them somehow is what we need to do. So Lincoln will keep WASC as the secondary. Please process our e-app requesting WASC as our secondary accreditor for financial aid." The Department therefore approved WSCUC as Lincoln's secondary accreditor on September 1, 2020, effective August 6, 2020. Lincoln withdrew from ACICS on March 15, 2021, while still under show cause and while ACICS was its primary accreditor, and afterwards, on March 17, 2021, filed the second required e-app, to approve WSCUC as the institution's only accreditor with the Department.

Lincoln also contends in its January 28, 2022 submission that the Department was legally required to follow a different, more abbreviated procedure for processing changes in an institution's primary accreditor, which it asserts, repeatedly, would have somehow resulted in the Department's approval of WSCUC as Lincoln's primary accreditor prior to the Department's receipt, from ACICS, of the August 22, 2020 show cause order. What Lincoln believes the Department's processes and timeframe should

have been is simply irrelevant. Also, there is no basis for Lincoln's contention that the Department would have approved a single application to make WSCUC Lincoln's primary accreditor prior to its receipt of ACICS's show cause order, given that the Department had not approved Lincoln's first e-app to add WSCUC as a secondary accreditor prior to its receipt of the order.

Lincoln further contends that once the Department recognized WSCUC as the institution's secondary accreditor, it was Lincoln's right under the statute and regulation to then simply notify the Department that it was designating WSCUC as its primary accreditor, without having to apply for and receive the Department's approval for the change. This position is not supported by the statute or the regulation, as an institution that is dually accredited cannot escape the consequences of probation, show cause, or withdrawal of accreditation by its primary accreditor by simply, at any time, redesignating its secondary accreditor as its primary accreditor and then dropping the accreditor that is proceeding against it. This is what the statute and regulations seek to prevent. Further, the argument is disingenuous given that Lincoln knew that changing accreditors was a two-step process, and that adding WSCUC as a secondary accreditor was just the first step. The Department specifically informed Lincoln on August 28, 2020, prior to its September 1, 2020, approval, that while it was approving WSCUC as a secondary accreditor, Lincoln must still submit an additional e-app in order to request approval of WSCUC as Lincoln's primary accreditor. Lincoln subsequently requested, on that same day, that WSCUC be approved as its secondary accreditor, and acknowledged that it would need to come into good standing with ACICS in order to have WSCUC approved as its primary accreditor. Had Lincoln contended on August 28, 2020 that an approval by the Department of WSCUC as the institution's secondary accreditor would allow it to subsequently redesignate WSCUC as its primary accreditor without the Department's approval, the Department would not have issued the September 1, 2020 approval letter.

Lincoln also contends that it had reasonable cause to change its primary accreditor, and that ACICS's August 22, 2020 show cause order should have been disregarded because it was the result of ACICS's failure to respect the institution's mission, because ACICS had acted inconsistently in issuing the show cause, because ACICS had not afforded Lincoln with due process with respect to the show cause, and because ACICS's placement of Lincoln on show cause status was the result of manipulative or vindictive conduct on the part of ACICS. *See* 34 C.F.R. § 600.11(a)(2). These contentions are not supported by the record of the interactions between ACICS and Lincoln.

In its December 21, 2021 letter, Lincoln stated: "[a]ll ACICS's unfavorable actions/decisions involving Lincoln University's institutional accreditation have been driven by the deliberate ACICS' plan to cover up its dishonesty by forcing LU discontinue the DBA degree program, which happens to be the evidence of its deceitful conduct." Lincoln also stated ACICS has "made it impossible to come out of the Show-Cause status without jeopardizing its reputation and operational viability."

The Department's review of the relevant documents and correspondence between Lincoln and ACICS establishes that, beginning in 2017, ACICS consistently informed Lincoln that it must either phase out its DBA program or find another institutional accreditor. For instance, in a May 23, 2017 letter to Lincoln, ACICS stated: "All current institutions with existing doctoral programs have until December 31, 2019, to: 1) teach-out their currently enrolled doctoral students in an orderly manner or, 2) move from ACICS to another institutional accrediting agency." In its May 17, 2018 letter to Lincoln, ACICS stated: "The institution is reminded that, consistent with previous communication from ACICS concerning its doctoral program, the 17 students still currently enrolled in the program will have

completed or withdrawn from the program when it is effectively terminated on December 31, 2019." Further, ACICS's April 11, 2019 letter to Lincoln states: "The institution's six (6) remaining DBA students are anticipated to graduate on December 7, 2019, prior to the December 31, 2019 deadline by which all ACICS institutions with doctoral degree program must have taught out or transferred all doctoral program students, or have voluntarily withdrawn from ACICS institutional accreditation." Despite this, ACICS discovered in December of 2020 that Lincoln had not terminated its DBA program, rather was offering the then-unapproved program, with 23 students enrolled. ACICS's accreditation criteria clearly states: "All programs and delivery methods must be within the institution's scope of accreditation and receive ACICS approval before recruiting or enrolling students."

With regard to Lincoln's show cause status at the time of its March 15, 2021, withdrawal from ACICS accreditation, ACICS's August 22, 2020, show cause letter states that ACICS took this action because of the institution's continued failure to resolve the findings of an October 2019 site visit. In the August 22nd letter, ACICS noted: "much of the documentation provided in the institution's most recent response was duplicative of that previously submitted and failed to address the remaining concerns." ACICS's December 16, 2020 letter (revised January 12, 2021) continuing Lincoln's show cause status shows that although only one finding remained unresolved, ACICS had confirmed through review of Lincoln's submission that the DBA program was active at that time. ACICS provided Lincoln until March 26, 2021 to respond to the letter, and directed Lincoln to provide evidence that it had terminated the unapproved doctoral program.

These were not, however, the only issues pending at the time of Lincoln's March 15, 2021 withdrawal from ACICS. In addition, an issue arose regarding misrepresentation of placement verification data in the ACICS Placement Verification Program ("PVP") system. On February 1, 2021, ACICS sent an inquiry letter to Lincoln regarding suspicious data it had discovered in its PVP system. In response, Lincoln stated that it discovered that an employee submitted false data to the system. Although Lincoln stated it had terminated the employee, it provided no documentation substantiating this. In addition, Lincoln did not make corrections in the PVP system, nor on the 2020 Campus Accountability Report ("CAR"). Therefore, in a March 1, 2021 letter, ACICS directed Lincoln to provide additional information regarding this issue, also by March 26, 2021. In the letter, ACICS directed Lincoln to, among other things, submit an internal audit of placement records for its 2020 CAR, as well as for the 2021 semi-annual CAR period.

The Department notes that Lincoln could not in any case have demonstrated reasonable cause to change its primary accreditor in July or August of 2020, prior to the Department's receipt of ACICS's August 22, 2020 show cause letter, given that ACICS had previously placed Lincoln on show cause on January 25, 2019. Because ACICS placed Lincoln on show cause less than 24 months prior to July and August of 2020, the institution fell within the provisions of 34 C.F.R. § 600.11(a)(1)(ii)(B). Just as with the August 22, 2020 show cause order, the January 25, 2019 show cause order does not fall within the exception provided in 34 C.F.R. § 600.11(a)(2).

Yet further, a new issue has come to light regarding Lincoln's eligibility to participate in the Title IV, HEA programs. In order to qualify as an eligible private nonprofit institution of higher education, an institution must be legally authorized to provide an educational program beyond secondary education in the state in which it is physically located in accordance with 34 C.F.R. § 600.9. *See* 34 C.F.R. §

600.4(a)(3). Under the provisions of 34 C.F.R. § 600.9(a)(1), an institution of higher education is legally authorized by a state if the state has a process to review and appropriately act on complaints concerning the institution, including enforcing applicable state laws.

After the Department issued the December 10, 2021, denial letter, the California Bureau for Private Postsecondary Education (“BPPE”) copied the Department on a December 20, 2021 letter informing Lincoln that although the institution had become exempt from the requirement to obtain BPPE approval based on its WSCUC accreditation, it had not subsequently entered into a State Authorization Contract with BPPE for the purpose of handling complaints. BPPE reminded Lincoln that such contracts served as legal authorization for purposes of Title IV, HEA program eligibility. BPPE requested that Lincoln consult the Department regarding its eligibility to participate in the Title IV, HEA programs.

As a result, on January 12, 2022, the Department requested that Lincoln submit a response to the concerns BPPE raised in the December 20, 2021 letter regarding its compliance with 34 C.F.R. § 600.9. On January 28, 2022, Lincoln provided a State Authorization Contract that had been executed on January 21, 2022 and was effective that date. Lincoln did not otherwise address its compliance with the requirements of 34 C.F.R. § 600.9. BPPE has since confirmed to the Department that despite Lincoln’s representation in its September 30, 2020 recertification application that it was legally authorized by the BPPE, Lincoln surrendered its BPPE approval on August 25, 2020 and had not had a State Authorization Contract with BPPE in effect from July 1, 2018 through January 20, 2022. Therefore, Lincoln did not satisfy the requirements of 34 C.F.R. § 600.9 during the period from August 26, 2020 through January 20, 2022, and actually ceased to qualify as an eligible Title IV, HEA institution on August 26, 2020, well before it withdrew from its ACICS accreditation on March 15, 2021.

As set forth above, the information in your request does not support rescinding the Denial. Consequently, the Denial now constitutes the Department’s final decision and Lincoln is ineligible to participate in the Title IV, HEA programs. The San Francisco/Seattle School Participation Division will contact you regarding the proper procedures for closing out Lincoln’s Title IV, HEA program participation.

Sincerely,

A black rectangular redaction box covering the signature of Susan D. Crim.

Susan D. Crim
Director
Administrative Actions and Appeals Service Group

cc: Ms. Michelle Edwards, President and CEO, ACICS, via medwards@acics.org
Ms. Jamiene Studley, President, WSCUC, via jstudley@wscuc.org
Ms. Deborah Cochrane, Chief, California Bureau for Private Postsecondary Education, via Deborah.Cochrane@dca.ca.gov
Department of Defense, via osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil
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Consumer Financial Protection Bureau, via CFPB_ENF_Students@cfpb.gov