



December 3, 2024

Professor Attila Brungs
Vice-Chancellor and President
University of New South Wales
Gate 9, High Street
Chancellery Building
Sydney, NSW
AUSTRALIA, 2052

Sent via UPS: 1Z37X7Y56634096676

Sent via Email: president@unsw.edu.au

Re: University of New South Wales
OPE ID: 00867000
Affirmation of Denial of Recertification Application to Participate in the Federal Student
Financial Assistance Programs

Dear Professor Brungs:

On November 7, 2023, the U.S. Department of Education (“Department”) advised University of New South Wales (“UNSW”) that its application for recertification to participate 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”), had been denied. As discussed in the letter denying UNSW’s application (the “Denial Letter”), the Department found that UNSW breached its fiduciary duty to the Department, failed to comply with the Department’s standards of financial responsibility, and did not meet the standards of administrative capability. The Department’s determination was based on UNSW’s repeated failure and continued inability over a period of more than a year to submit required and compliant financial statements for its Fiscal Year Ended (“FYE”) December 31, 2021.

The Denial Letter provided UNSW with the opportunity to present factual evidence to dispute the Department’s findings or demonstrate their inaccuracy. UNSW’s November 22, 2023 letter requesting an appeal of the denial of UNSW’s recertification application (the “Reconsideration Request”) was timely received on November 27, 2023.¹ As the Reconsideration Official, I have independently reviewed the Reconsideration Request, along with the evidence provided by the Administrative Actions and Appeals Services Group and UNSW. My conclusion, after reviewing the Reconsideration Request and evidence, is that UNSW’s application for

¹ UNSW’s reconsideration request also included a financial statement report for the FYE December 31, 2021, which was uploaded to the Department’s eZ-Audit system on November 14, 2023.

recertification was properly denied, and the evidence does not warrant a reversal. The Reconsideration Request, rather than disputing the basis for the Denial, actually supports the Department's conclusions in the Denial Letter.

The decision to deny UNSW's recertification application is affirmed and is now final. As set forth in the Denial Letter, as of November 30, 2023, UNSW ceased to be eligible to participate in the Direct Loan Program, which includes the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, and the Federal Direct PLUS Program. Additionally, as explained more fully below, UNSW's ability to disburse Federal loan funds to currently enrolled students who fell into the exception for eligible U.S. citizens and eligible non-citizens will end at the conclusion of this academic year.

If UNSW wishes to participate in the Title IV, HEA programs in the future, it may apply for reinstatement.

I. Financial Responsibility and Reporting Requirements

As discussed in the Denial Letter, to participate in any Title IV, HEA program, an institution must demonstrate to the Department that it meets the standards for participation set forth at 34 C.F.R. Part 668, Subpart B; the standards of financial responsibility set forth at 34 C.F.R. Part 668, Subpart L; and the fiduciary standard of conduct. *See* 34 C.F.R. §§ 668.13(a), 668.82(a). In the capacity of a fiduciary, an institution such as UNSW is subject to the highest standard of care and diligence in administering the Title IV, HEA programs, and in accounting for the funds received under those programs. *See* 34 C.F.R. § 668.82(b)(1).

The financial responsibility regulations require that a proprietary, private non-profit, or foreign school must include a Financial Responsibility Supplemental Schedule ("Supplemental Schedule") with and as part of any audited financial statements submitted to the Department on or after July 1, 2020. *See* 34 C.F.R. § 668.172 and Section 2 of Appendix A or B to Subpart L of Part 668. The Supplemental Schedule contains the financial elements required to compute the institution's composite score² and is a vital component of a school's annual audit submission. The financial responsibility regulations make clear that the failure of an institution to submit its financial statements and compliance audits by the due date and in the manner required by the Department is grounds for adverse action by the Department to end the institution's participation in the Title IV, HEA programs. 34 C.F.R. § 668.171(i)(3).

II. Procedural History and Denial of Recertification Application

As discussed in detail in the Denial Letter, after UNSW's June 2022 financial statement submission for the fiscal year ending December 31, 2021 ("FYE 2021") was rejected as incomplete, UNSW submitted four more incomplete annual audit submissions over the next year.

² Notably, UNSW's composite scores failed for the FYE December 31, 2020 and FYE December 31, 2022 audit periods.

Each time, the Department reviewed the submission; determined that it was incomplete and not in compliance with the regulation; and drafted a notification to the school that the submission had been rejected. Each time, the Department notified the institution of the faults in the submission and provided UNSW with options to correct the issues so that it could submit an annual audit that would comply with the regulations.

On September 21, 2023, UNSW submitted a sixth incomplete annual audit submission for FYE 2021. On September 27, 2023, the Department sent a letter to UNSW informing it that its sixth audit submission for FYE 2021 was incomplete. This letter requested that UNSW resubmit within seven calendar days, and again reminded the institution that its failure to provide an acceptable audit could result in the Department's denial of a pending application for recertification. In spite of this, UNSW failed to resubmit an annual audit submission for FYE 2021 within the allotted time.

On November 7, 2023, the Department issued the Denial Letter advising UNSW that its application for recertification was denied. As had been forewarned in previous communications, the application was denied based on UNSW's repeated failure to submit a complete and compliant financial audit for FYE 2021. As the Denial Letter noted, this constituted a failure to meet the standards of financial responsibility; a failure to demonstrate administrative capability; and also a failure to exhibit the trustworthiness required of a fiduciary.

III. Reconsideration Request

UNSW, in its Reconsideration Request, does not dispute the regulatory requirements nor its failure to comply with them. In the Reconsideration Request, UNSW states that: 1) UNSW should not have had to comply with the regulatory requirements prior to receiving the Denial Letter because its own legal requirements made it "impossible" for UNSW to submit a complete financial audit until November 2023, and 2) that it demonstrated its administrative capability to comply with the regulatory requirements because it submitted a complete financial audit for FYE 2022, which was recognized by the Department to be complete. Additionally, UNSW asserts that the financial audit records for FYE 2021 that it submitted along with the Reconsideration Request are complete and in compliance with Department regulations and, therefore, recertification should be granted.

Despite these arguments, the Reconsideration Request does not contain any evidence that refutes the facts or findings in the Denial Letter. To the contrary, the Reconsideration Request concedes that the Department was correct in finding that UNSW had failed repeatedly to submit FYE 2021 complete financial audit records that comply with the regulations. In addition, the submission of the financial audit records for FYE 2021, regardless of whether or not such records are compliant with Department requirements, do not merit recertification, as they were not submitted in a timely fashion.

First, UNSW claims that prior to receipt of the Denial Letter in November 2023, UNSW's legally required auditor, the Audit Office of New South Wales ("AONSW"), would not authorize

UNSW to submit the Supplementary Schedule, the auditor's report, and the audited financial statements as one audited financial submission as required by the Department's regulations. UNSW further claims that AONSW changed its guidance to allow single-file submissions only after UNSW received the Denial Letter. UNSW provided no legal support for its position that AONSW's requirements made compliance impossible.

Furthermore, UNSW's position is contradicted by the fact that UNSW submitted a complete, single-file submission for FYE 2022 – which was prepared by AONSW and included an April 2023 audit letter – in June 2023. UNSW's submission of the complete FYE 2022 annual audit and financial statements, prepared by AONSW in a single file in June 2023, directly contradicts UNSW's assertion that AONSW changed its guidance only after the institution received the Denial Letter in November 2023.

Second, UNSW claims that the fact that it provided a complete FYE 2022 submission demonstrates that it has requisite administrative capability to participate in Title IV, HEA programs. However, while UNSW did provide a complete FYE 2022 submission, this does not change the fact that it submitted six incomplete submissions for FYE 2021, including two made after it made its FYE 2022 submission. Each time UNSW sent an incomplete submission, the Department detailed the faults in the submission and provided options to correct the issues, but UNSW failed to implement them. When the Department gave UNSW a final, seventh, chance to make a compliant FYE 2021 submission, it failed to do so within the allotted time frame. The Department's conclusion that UNSW failed to demonstrate administrative capability is well-supported by UNSW's record of repeated failures.

Finally, UNSW asserts that, along with the Reconsideration Request, it has provided a complete and compliant FYE 2021 submission and, therefore the Department should grant UNSW recertification. However, if the documents provided with the Reconsideration Request constitute a complete and compliant FYE 2021 audit submission, this does not merit granting UNSW's request, as this new submission was not received by the Department prior to the denial of UNSW's application on November 7, 2023.

The Denial Letter was based on UNSW's failure to make a complete and compliant submission for FYE 2021 before the issuance of the Denial Letter, as well as the six noncompliant submissions made by UNSW before that. Another submission will not change the underlying conclusion that UNSW repeatedly failed to submit a complete and compliant financial audit for FYE 2021 or to correct the errors in its submissions in a timely fashion, which constituted a failure to meet the standards of financial responsibility; a failure to demonstrate administrative capability; and also a failure to exhibit the trustworthiness required of a fiduciary. Therefore, the conclusions reached in the Denial Letter were proper, and UNSW's Reconsideration Request is denied.

IV. Conclusion

Denial of UNSW's application for recertification is affirmed. In accordance with the regulations and the Denial Letter, UNSW's eligibility to participate in Title IV programs ended November 30, 2023. As of that date, UNSW was no longer eligible to participate in the Direct Loan Program, which includes the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, and the Federal Direct PLUS Program.

As noted in the Denial Letter, there is an exception for otherwise eligible U.S. citizens and eligible non-citizens who have previously borrowed FFEL or Direct Loan Program loans to attend UNSW while it was still an eligible institution and who remained continuously enrolled. Those students were permitted to obtain federal student loans for UNSW's academic year that included November 30, 2023 and the subsequent academic year, which is this academic year ending December 5, 2024. *See* 20 U.S.C. § 1002(a)(2)(D); 34 C.F.R. § 600.58(c). UNSW is required to provide a close out audit pursuant to 34 C.F.R. § 668.23 and 668.26.

If UNSW wishes to participate in the Title IV, HEA programs in the future, it must apply for reinstatement that satisfactorily addresses all of the deficiencies identified in the Denial Letter, including the inability to comply with the Department's annual audit submission requirements, as well as the failing composite scores. UNSW will be required to provide financial protection and to meet any other conditions the Department deems necessary at the time that it considers such an application. UNSW may contact the Department's Multi-Regional and Foreign Schools Participation Division for additional information regarding the process for submitting an application for reinstatement.

Sincerely,

A solid black rectangular box redacting the signature of Colleen M. Nevin.

Colleen M. Nevin
Deputy Chief Enforcement Officer

cc: Leah Crestani, Financial Aid Administrator, via l.crestani@unsw.edu.au
Department of Defense, via osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil
Department of Veteran Affairs, via INCOMING.VBAVACO@va.gov
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