September 13, 2017

Dr. Betty Vandenbosch
President/CEO
Kaplan University
550 West Van Buren Street
Suite 700
Chicago, IL 60607

UPS Tracking Number
1ZA879640299288088

Re: **Preacquisition Review of the Proposed Change in Ownership Application of Kaplan University to be acquired by Purdue NewU, an Indiana nonprofit public benefit corporation - OPE ID 00458600**

Dear President Vandenbosch:

At your request, the Multi-Regional and Foreign School Participation Division ("MRFSPD") of the U.S. Department of Education ("Department"), Federal Student Aid has conducted a preacquisition review ("Review") of the proposed Change in Ownership Application of Kaplan University ("KU" or "the Institution")-OPE ID 00458600. At the current time, KU is owned by Iowa College Acquisition, LLC ("ICA"), which is owned by Kaplan Higher Education, LLC ("KHE").

If consummated, the change in ownership ("CIO") will be accomplished pursuant to the terms of a Contribution and Transfer Agreement ("Transfer Agreement") between KHE, ICA, Purdue University ("Purdue"), and Purdue NewU, Inc. ("NewU"). NewU is a newly formed Indiana public benefit corporation which will acquire KU and its institutional assets and operations from KHE and ICA (the "Transaction"). Purdue is the sole member of NewU. The Transfer Agreement refers to Purdue and NewU collectively as the "Purdue Parties" and to KHE and ICA collectively as "Contributor."

KU and Purdue have requested the Department's approval of the Institution as a public institution once it becomes affiliated with Purdue as a result of the CIO.

A preacquisition review is undertaken prior to a CIO so that the Department can preliminarily advise an institution whether the Department has identified any problems with the institution's application or the proposed transaction, and to identify, to the extent feasible, any additional conditions that may be imposed in a Provisional Program Participation Agreement ("PPPA"). In the course of its Review, the Department reviewed the electronic application and supporting documentation submitted by KU on June 19, 2017, as well as additional supporting documentation submitted by Purdue on June 22, 2017. The materials submitted by Purdue include a copy of the Transfer

Agreement with exhibits (included a copy of the Transition and Operations Support Agreement ("TOSA") with its own exhibits).

This letter sets out the results of the Department's Review of KU's requested approvals for the CIO and public institution status as result of KU becoming an affiliate of Purdue. As explained below, the Department has preliminarily concluded that, based on the information and documents provided to date, it does not see any impediment to KU's request for approval of the CIO or its request for approval of public institution status ("Preliminary Determination"). Please note however, that formal approvals of the CIO and public institution status are contingent on KU's compliance with the requirements of 34 C.F.R. § 600.20(g) and (h), the Department's review and approval of any submissions required by those regulatory provisions, and any further documentation and information requested by the Department following the CIO, including all documents related to the Transaction and KU's status as a public institution. Some of the items for further review are described below. This Preliminary Determination is intended to provide KU with the Department's current view about the CIO and request for public institution status, but it is not binding on the Department.

I. CHANGE IN OWNERSHIP AND REQUEST FOR PUBLIC INSTITUTION STATUS

A. Review of Information Provided to Date

The Department regulations identify certain covered transactions for an institution that constitute a change of ownership which require the institution to apply for and obtain approval from the Department to continue participating in Title IV, HEA programs. These include instances where an institution is sold, is merged with one or more eligible institutions, experiences a change in the ownership of the controlling stock, has a transfer of assets that comprise a substantial portion of the educational business of the institution, or has a change in status as a for-profit, nonprofit, or public institution. 34 C.F.R. § 600.31(d). To establish eligibility and to continue participation in Title IV, HEA programs, an institution must demonstrate to the Department that, after the change, the institution qualifies to be certified to participate under 34 C.F.R. Part 668, Subpart B pursuant to 34 C.F.R. § 600.31(a)(3)(ii).

Under the Transfer Agreement, KU and its institutional assets will be contributed to NewU for $1. However, the Transfer Agreement and the TOSA also provide that the consideration for the transfer of KU to NewU is the execution of the TOSA by NewU. *See, e.g.,* Transfer Agreement § 3.1; TOSA at Recital F. Pursuant to the TOSA, the Contributor will provide support services to NewU in various administrative areas, including in the following: marketing; first year student advising; admissions support services; financial aid administration (student eligibility, aid distribution, and Title IV compliance); international student recruitment; test preparation for standard licensure or admission tests, etc. *See* TOSA § 2.4 for the full list of support services to be provided.[1]

Under the TOSA, NewU and Contributor are paid their respective Academic Costs (NewU) and Support Costs (Contributor). TOSA Exhibit F at §1(b). Thereafter, KU's revenue is split between

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[1] The Department reminds Contributor that it must comply with the third party servicer requirements set forth in 34 C.F.R. § 668.25. In the event that Contributor provides third party services to more than one institution, it must also comply with the third party servicer audit requirements. *See* 34 C.F.R. § 668.23(c)(2).

Contributor and NewU pursuant to a waterfall distribution schedule appended as Exhibit F to the TOSA. *See* TOSA §9 (according to the recitation in the TOSA, the distribution of revenues in order of priorities set forth in the waterfall is "to provide financial protection and certain financial incentives to New University, while compensating Contributor fairly for its original contribution of the Institutional Assets") ("Distribution Waterfall" or "Distribution").

For the first five years of the TOSA 30-year term ("Phase I"), the Distribution Waterfall includes quarterly payments to NewU and Contributor from the NewU Revenue Account. There are three payments to NewU: unpaid Academic Costs; the NewU Efficiency Payment; and a $10 million Priority Payment (annually for five years). After those payments are made to NewU, three payments are made to Contributor: unpaid Support Costs; the Contributor Efficiency Payment; and the Contributor Fee of 12.5% of actual Revenues for the quarter (plus any accrued unpaid Contributor Fees).[2] Any remaining funds are then distributed to NewU. See TOSA Exhibit F at §2(a)-(f).

During the remaining 25 years (and any renewal term) ("Phase II"), the revenue is distributed in the same manner (including the 12.5% Contributor Fee), except that the $10 million annual Priority Payment to NewU ceases, and NewU is entitled to a NewU Upfront Payment (to the extent of available cash) in the amount of 10% of Remaining Revenue (as that term is described in TOSA Exhibit F at §3(b)).[3]

The Department notes that pursuant to Section 2.4 of the Transfer Agreement, except as expressly provided therein, none of the "Purdue Parties" (consisting of Purdue University and NewU) will be assuming any liabilities of the Contributor or KU (referred to in the Transfer Agreement as "ED Institution"). The Transfer Agreement also specifically excludes liability of the Purdue Parties for the Contributor's breach of any Student Enrollment Contract that occurs prior to the Closing (as that term is defined in the Transfer Agreement). Section 2.5 of the Transfer Agreement identifies in a very broad way the liabilities that are retained by the Contributor (i.e., KHE and ICA), including all liabilities resulting from the operation of KU prior to the closing date. Read together, these sections operate to attempt to relieve the Purdue Parties, including NewU, from any liabilities arising from KU's participation as a Title IV institution prior to the Closing date. As set forth below, the Department will not approve the CIO unless the Purdue Parties assume responsibility for both pre-closing and post-closing educational liabilities. The parties are not restricted in their ability to provide that KHE/ICA indemnify the Purdue Parties for any or all of those liabilities.

KU currently participates in Title IV, HEA programs as a proprietary school. In April 2017, the State of Indiana enacted legislation expanding the definition of "Approved postsecondary education institution" to include a "postsecondary SEI affiliated institution." *See* Indiana Code Ann. 21-7-13-6(a)(5) and (b)(4). To be designated a "postsecondary SEI affiliated institution," the institution, *inter alia,* must be organized as a public benefit corporation, be controlled by a state educational institution, and have its debts and liabilities backed by the controlling state institution. *See* Indiana Code Ann. 21-7-13-26.5(a). The recent legislation also allows a state educational institution to

[2] The Contributor Fee is based on "actual Revenues." See TOSA Exhibit F at 2(f)(Distribution Waterfall) and TOSA Exhibit A at page 8 (definition of "Revenues").

[3] The TOSA also includes Termination Fees and a Buy-Out option. *See generally* TOSA at §14. The parties have also provided for a revenue-based payment to Contributor in the event that NewU transfers any of the purchased assets during the Term of the TOSA. See TOSA at §13.2; TOSA Exhibit J (illustration of transfer methodology).

become a member of a postsecondary SEI affiliated educational institution that it controls. *See* Indiana Code Ann. 21-7-10-1, 21-27-10-5. Pursuant to the new legislation, NewU – the prospective owner of KU – has been organized as an Indiana public benefit corporation, Purdue is the sole member of NewU, and Purdue (through its appointment of the NewU board) controls NewU. The legislation further provides that for "purposes of United States Department of Education regulations, a postsecondary SEI affiliated educational institution is subject to the administrative supervision and control of the executive branch by virtue of appointment by the governor of all or a majority of the trustees of a controlling state educational institution." Indiana Code Ann. 21-27-10-8. In addition, the controlling institution (here, Purdue) is considered to be a governmental entity equivalent to the state for purposes of the Department's regulations. Indiana Code Ann. 21-27-10-9. On August 11, 2017, the State of Indiana Higher Education Commission approved the authorization of "Purdue NewU" (by that name and under its official name once selected) as a postsecondary state educational institution ("SEI") affiliated institution controlled by Purdue.

Based on its preliminary review of the supporting documents submitted by Purdue and the representations by representatives of Purdue and KHE, the Department has concluded that control of NewU/KU will not be retained by any entity or person who controls KHE or ICA.[4] Purdue is the sole member of NewU, and the trustees of Purdue appoint the members of the NewU Board. *See* TOSA § 2.1. This conclusion is material to the Department's Preliminary Determination, and will need to be confirmed after the Transaction occurs. The issue of control might be viewed differently if a majority of NewU board trustees have ties to KHE/ICA, or other affiliates of Kaplan/Graham Holdings.

B. The Department's Preliminary Determination

Based on the facts as described above, the Department has not identified any known or present impediment to the CIO whereby KU and its institutional assets will be transferred to NewU pursuant to the terms of the Transfer Agreement and the TOSA. In addition, the Department has not identified any known or present impediment to Purdue and KU's request for the Institution to become a public institution by virtue of its affiliation with Purdue. The Department's determination as to KU's public status is based upon the Indiana legislation discussed above, and is contingent upon the Indiana Commission of Higher Education's authorization of KU as a postsecondary SEI affiliated institution, and confirmation by the Purdue board of the complete control by Purdue over NewU/KU. In addition, the Department's Preliminary Determinations with regard to the CIO and KU's public institution status are specifically based on the following, which will constitute material conditions for issuance of a PPPA:

1. The CIO and public institution status are approved by all of KU's federally recognized accrediting agencies.

2. The Department will require both Purdue Parties (Purdue and NewU) to sign the PPPA.

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[4] The Department understands that many of the academic employees of KU will continue under the new ownership, and support services under the TOSA will be provided by KHE.

3. NewU/KU has its debts and liabilities backed by Purdue, which constitutes an instrumentality of the State of Indiana for purposes of the Department's regulations, in accordance with Indiana Code Ann. 21-7-13-26.5(a) and 21-27-10-9.

4. Notwithstanding any provisions to the contrary in any of the documents relating to the Transaction (including as described above in the Transfer Agreement), the Purdue Parties will assume responsibility for liabilities resulting from the operation of KU as an educational institution, whether they are known or unknown, and whether they accrue prior to, or after the closing of the Transaction ("Educational Liabilities"). Educational Liabilities include all liabilities relating to KU's participation in Title IV, HEA programs, as well as all liabilities relating to Student Enrollment Contracts. However, the Purdue Parties' assumption of the Educational Liabilities does not limit or relieve KHE and ICA from their liability for pre-closing Educational Liabilities.

5. By the date that NewU/KU delivers the PPPA to the Department for countersignature, the institution will have been re-named to include "Purdue" in its name. Within 30 days of the PPPA delivery to the Department, all institutional assets, materials, and communications (to the extent that they contain "Kaplan" branding) must be re-branded to include the name "Purdue."

6. Within 10 days after the transmission of this pre-acquisition letter, and consistent with the Transaction documents and representations to the Department, Purdue and NewU must affirm by documentation to the Department that Purdue exerts full control over NewU and its academic operations, including appointment of the members/trustees of NewU's board and continuing oversight by the Purdue board.

7. Within 10 days after the transmission of this pre-acquisition letter, Purdue shall submit a detailed description of the 12.5% Contributor Fee payment to KHE/ICA provided for in the TOSA which demonstrates the plan for ensuring that students will be served first, and that all educational and operational expenses are being covered prior to any portion of the Contributor Fee being paid to KHE/ICA.

8. The TOSA provides that the Contributor Fee accrues from year to year with interest on any unpaid portion (*see* TOSA Exhibit F at §2). The Department will not approve the CIO if that provision is in effect, and will require the Contributor Fee to be capped on an annual basis to the extent of available cash during that fiscal year. It will not be allowed to accrue as an unpaid balance.

9. Following the CIO, Purdue must submit consolidated financial statements to the Department that include NewU/KU.

II. UNINTERRUPTED PARTICIPATION IN THE TITLE IV PROGRAMS PRIOR TO EXECUTION OF THE PROVISIONAL PROGRAM PARTICIPATION AGREEMENT

A. Requirements within 10 days following the Change of Ownership

When a change in ownership occurs, the Department may continue the institution's participation on a provisional basis if the institution submits a "materially complete application," as described in 34 C.F.R. § 600.20(g), that is received by the Department no later than 10 business days after the date the change occurred. If a materially complete application is submitted, the Department may consider offering the Institution a Temporary Provisional Program Participation Agreement ("TPPPA"), pending the Department's and the Institution's execution of a new PPPA.

To submit a materially complete application (34 C.F.R. § 600.20(g)(2)), an institution must submit the following[5]:

		Status
1	Complete electronic Application for Approval to Participate in the Federal Student Aid programs;	E-App Submitted on June 19, 2017. Need to submit Section L (signature page) and any supporting documentation that has not been submitted.
2	Copy of the Institution's state licenses or equivalent that: a) Was in effect on the day before the change in ownership; and b) Authorized the Institution to provide a program of postsecondary education in the state(s) in which it is physically located;	Must be submitted for all states where the Institution will have a physical location.
3	Copy of the accrediting agency(ies) approval that: a) Was in effect on the day before the change in ownership and granted the Institution accreditation status; and b) Includes approval of the non-degree programs it offers;	Must be submitted from all federally-recognized accrediting agencies that provide accreditation to KU. Must also submit accrediting agency approval of the redesignation of the main location from Davenport, Iowa to Indianapolis, Indiana.
4	Audited financial statements of the institution's two most recently completed fiscal years that are prepared in accordance with the requirements of 34 C.F.R. § 668.23. Under 34 C.F.R. § 668.23(d), these statements must be prepared on an accrual basis in accordance with generally	These have been submitted for FY 2015 and 2016. In addition, financial statements for FY 2017 must

[5] The Department has numbered each of the document requests sequentially to facilitate NewU/KU's response.

	accepted accounting principles ("GAAP"), and audited by an independent auditor in accordance with generally accepted government auditing standards ("GAGAS"); and	be submitted by June 30, 2018.
5	In accordance with 34 C.F.R. § 600.20(g)(2), a new owner is required to submit audited financial statements of its two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 C.F.R. § 668.23(d), including statements prepared in accordance with GAAP and audited in accordance with GAGAS.	NewU has not been in existence for two years, nor does it appear that NewU can produce audited financial statements that demonstrate any substantial business experience to date. Because NewU/KU will have its debts and liabilities backed by Purdue, this requirement is waived.

B. Continuation of the TPPPA

In accordance with 34 C.F.R. § 600.20(h)(2)(iii), the TPPPA expires on the last day of the month following the month in which the CIO occurred. At the Department's discretion, the TPPPA may be extended on a month-to-month basis only if, prior to the expiration date, an institution submits:

		Status
6	A "same day" balance sheet showing the financial position of NewU as of the date of the ownership change, that is prepared in accordance with GAAP and audited in accordance with GAGAS;	Must be submitted.
7	Approval of the change in ownership from the state(s) in which the institution is located by the state agency that authorizes the institution to legally provide postsecondary education in that state;	Must be submitted. Documentation of the State of Indiana Commission of Higher Education's approval of the Institution's status as a postsecondary SEI affiliated institution has been received by the Department. Please submit any related approvals from the State of Indiana.
8	Approval of the change in ownership from the institution's accrediting agency(ies); and	Must be submitted. In addition, must submit the accrediting agencies' approval of the Institution's public institution status.
9	If the Institution is not exempt from the requirement under 34 C.F.R. § 668.14(b)(15), a copy of its Default Management Plan.	Must be submitted (not exempt).

To the extent the above items have not already been provided, if NewU/KU fails to provide them by the stated expiration date of the TPPPA, the TPPPAs will expire on that date, without further notice.

C. Additional Documents and Information Required for Department's Review

In addition to the foregoing documents, the NewU/KU must also submit the following documents and information (no later than the period described in 34 C.F.R. § 600.20(h)(2)(iii)) for the Department to complete its review of the CIO and conversion to public institution status:

10	A copy of the agreement by which the CIO will be consummated, including any related documents or agreements;	The executed Transfer Agreement was submitted to the Department on June 22, 2017; please submit the executed TOSA. Submit any amendments to those agreements which are necessary to comply with the Department's requirements set forth in this letter, and any other amendments. In addition, submit a copy of the closing index for the Transaction.
11	Copy of any agreements between the institution or its new owner and any entity that is owned by former employees, the former owner, board member of the new owner, or party related to either the new owner or the pre-CIO owner. Agreements include, but are not limited to: consulting, employment, leasing, and management services agreements; and	If agreements other than the TOSA exist, please submit them.
12	The letter of public status in accordance with 34 C.F.R. § 668.171 (c)(B).	Must be submitted in eZ-Audit system.

Unless and until the conversion to public institution status is approved by the Department, the parties are reminded that the Institution must continue to report its Title IV revenue percentages ("90/10 percentages") and its gainful employment data. The Department's procedures require a proprietary institution converting to another status to report its 90/10 percentages in the first fiscal year following the approval of the conversion. The Department has been advised that the Higher Learning Commission ("HLC") will not be reviewing the CIO and conversion to public institution status until its February 28, 2018 commission meeting. Because of the timing, KU will submit its 90/10 audit for FYE December 31, 2017 to the Department on or before June 30, 2018. That audit will cover the last fiscal year prior to the HLC commission meeting. If the Department and HLC give final approval to the CIO and the conversion to public institution status, and KU has a passing

90/10 audit for FY 2017, no further 90/10 audits will be required. In reaching its decision to relieve KU of further 90/10 reporting if the FY 2017 90/10 audit passes, the Department has considered KU's compliance with 90/10 over the last three years (FY 2014 (81.31%), 2015 (78.82%) and 2016 (76.71%)).

D. Next Steps

Once the CIO takes place, NewU/KU must notify the Department within 10 business days. Since KU has already submitted the electronic preacquisition application, please send this notification and the other documentation required for a materially complete application to Shein Dossa and Shari Mecca at Shein.Dossa@ed.gov and Shari.Mecca@ed.gov. However, as soon as NewU changes the name of the Institution, an updated application should be submitted.

You are reminded of the recommendations the Department has provided to all institutions in the Federal Student Aid Handbook. If it has not already done so, KHE/ICA should provide the Purdue Parties with copies of KU's existing Eligibility and Certification Approval Report ("ECAR"), institutional refund policy, return of Title IV funds policy, any required default management plan, program reviews, audited financial statements (for at least the two most recently completed fiscal years), and compliance audits.

If you have any questions, please contact Shein Dossa at 215-656-6461 or Shari Mecca at 646-428-3757.

Sincerely,

[redacted]

Michael Frola
Division Director

cc: Mitchell E. Daniels Jr., President –Purdue University
David J. Adams, General Counsel, SVP, Kaplan Higher Education and Professional Education (*email:* *dadams@kaplan.edu*)
Steven R. Schultz, Chief Legal Counsel, Purdue University (email: *schult51@purdue.edu*)