February 15, 2023

Board of Trustees
University of Arkansas
via email

C.C. Gibson III
Chairman
Board of Trustees
University of Arkansas
cgibson@uasys.edu

RE: University of Arkansas System and University of Phoenix

Dear Chairman Gibson and Trustees,

The undersigned organizations are veteran, student, consumer, civil rights, labor and faculty higher education advocates focused on ensuring that postsecondary students are protected from predatory schools and have access to high quality education that does not leave them with unmanageable debt. We are writing to you because the University of Arkansas System (UA System) has confirmed that a nonprofit entity affiliated with the UA System may be seeking to acquire the for-profit University of Phoenix.[1] As it appears you may be called upon to judge the wisdom of this transaction, we are bringing to your attention certain issues for consideration—evidence of unfair and deceptive practices by the University of Phoenix, potential liability for hundreds of millions of dollars in federal loans, and poor outcomes for students.

<u>A history of allegations against the University of Phoenix for unfair and deceptive trade practices</u>

Although the UA System has expressed interest in "supporting the university's mission of advancing high quality, career focused education"[2] as a reason for affiliating with the University of Phoenix, we are deeply concerned about the University of Phoenix's documented history[3] and long-running allegations from veterans, students, former employees, and findings by government agencies that the University of Phoenix has engaged in unfair and deceptive trade practices, including:

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[1] Debra Hale-Shelton, *UA System-Affiliated Nonprofit Looking at Possible Purchase of University of Phoenix*, Arkansas Times (Jan. 24, 2023) https://arktimes.com/arkansas-blog/2023/01/24/ua-system-affiliated-nonprofit-looking-at-possible-purchase-of-university-of-phoenix

[2] <u>Id.</u>

[3] *University of Phoenix—Recent Actions and Concerns*, Veterans Education Success (Feb. 8, 2021) https://vetsedsuccess.org/university-of-phoenix-recent-actions-and-concerns/

- Charges from the Federal Trade Commission ("FTC") that the University of Phoenix specifically "targeted active duty servicemembers, veterans, and military spouses" with deceptive advertising;[4]
- The Department of Education's determination that there are "strong indicia regarding substantial misconduct"[5] by the University of Phoenix, warranting its inclusion on a list of schools whose students will receive automatic federal loan discharges;
- Allegations from whistleblower(s) that the University of Phoenix certified students who did not have a high school diploma or GED, and deceptively inflated job placement statistics;[6]
- Student veterans' allegations that the University of Phoenix misled them about the cost of their education and job opportunities, and provided low quality education.[7]

According to one Army Veteran who graduated from the University of Phoenix in 2018, "Phoenix doesn't treat its students right. I was aggressively recruited, lied to about the length and cost of my program, and promised career services that were nonexistent."[8]

In 2019, the Federal Trade Commission obtained a $191 million settlement with the University of Phoenix to resolve the FTC's charges of deceptive marketing based on advertisements giving the false impression that the school worked with companies including AT&T, Yahoo!, Microsoft, Twitter, and the American Red Cross to create job opportunities for its students and tailor school programs for such jobs. The FTC's announcement of the settlement provided:

> UOP will pay $50 million in cash as well as cancel $141 million in debts owed to the school by students who were harmed by the deceptive ads. This is the largest

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[4] Press Release, Federal Trade Commission, *FTC Obtains Record $191 Million Settlement from University of Phoenix to Resolve FTC Charges it Used Deceptive Advertising to Attract Prospective Students* (Dec. 10, 2019) https://www.ftc.gov/news-events/news/press-releases/2019/12/ftc-obtains-record-191-million-settlement-university-phoenix-resolve-ftc-charges-it-used-deceptive

[5] Joint Motion for Preliminary Approval of Settlement filed June 22, 2022, p.6, Sweet v. Cardona, Case No. 19-cv-03674 (N.D.CA) https://static1.squarespace.com/static/62d6e418e8d8517940207135/t/62e2e393c45d075866419dcd/1659036563261/246+Joint+Motion+for+Preliminary+Approval+of+Settlement.pdf) and proposed Settlement Agreement, Attachment C https://static1.squarespace.com/static/62d6e418e8d8517940207135/t/62e2e3b97e7dc96507973c41/1659036601692/246-1+Settlement+Agreement+6-22-2022.pdf)

[6] Ashlee Kieler, *Whistleblower Lawsuit Claims University of Phoenix Defrauded the Federal Government*, Consumer Reports (Mar. 9, 2016) https://www.consumerreports.org/consumerist/whistleblower-lawsuit-claims-university-of-phoenix-defrauded-the-federal-government/

[7] *Memorandum re: Veteran Complaints Alleging Illegal Practices at University of Phoenix*, Yale Law School Veterans Legal Services Clinic (May 11, 2017) https://vetsedsuccess.org/student-veteran-complaints-university-of-phoenix/; *see also*, *Summary of Veteran and Servicemember Complaints about University of Phoenix*, Veterans Education Success (Feb. 2020) https://vetsedsuccess.org/summary-of-veteran-and-servicemember-student-complaints-about-university-of-phoenix/

[8] Student Veteran Testimony to the Department of Education (Feb. 14, 2022) https://vetsedsuccess.org/student-veteran-submission-alphi-coleman-testimony-to-the-department-of-education/

> settlement the Commission has obtained in a case against a for-profit school. **Students making important decisions about their education need the facts, not fantasy job opportunities that do not exist.**[9] [10] (*emphasis added*)

<u>University of Phoenix's and its successor's potential liability for hundreds of millions of dollars in federal student loans</u>

The University of Phoenix faces significant potential liability to the Department of Education. According to publicly available information, thousands of former University of Phoenix students have filed applications to have their federal student loans discharged.[11] While the FTC's settlement provided relief to certain students for institutional debt, it did not resolve the students' federal loan obligations, nor, importantly, the school's potential liability to the Department of Education for any approved Borrower Defense to Repayment loan discharge applications.

The Department has the authority under federal regulations to recoup funds from the University of Phoenix for any such approved loan discharges. The Department's recent actions regarding DeVry University are instructive on this point. This past August, the Department of Education commenced recoupment efforts for millions of dollars against DeVry University, and in doing so explained: "The recoupment effort follows the Department's announcement in February 2022 that it had approved [borrower defense] claims after finding that, from 2008 through 2015, DeVry had repeatedly misled prospective students across the country."[12]

The University of Phoenix's potential liability for discharged federal loans could attach to any purchaser or successor. Further, under the Department of Education's policies, such liability may attach to any corporation or legal entity that has, or could have, a "direct or indirect" effect on the institution's financial responsibility. In March 2022, the Department of Education published

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[9] Press Release, Federal Trade Commission, *FTC Obtains Record $191 Million Settlement from University of Phoenix to Resolve FTC Charges it Used Deceptive Advertising to Attract Prospective Students* (Dec. 10, 2019), https://www.ftc.gov/news-events/news/press-releases/2019/12/ftc-obtains-record-191-million-settlement-university-phoenix-resolve-ftc-charges-it-used-deceptive

[10] In the FTC settlement, the University of Phoenix agreed that its future advertising would be "non-misleading." Yet this year the school appears to have been running a national advertising campaign declaring that its students get the benefit of "No out of state tuition" – seeming to create the false impression that the school is a state institution and that its tuition is comparable to in-state tuition at such institutions. *See* David Halperin, *University of Phoenix Seems to Break Pledge to Avoid Misleading Ads*, Republic Report (Jan. 17, 2023). https://www.republicreport.org/2023/university-of-phoenix-seems-to-break-pledge-to-avoid-misleading-ads/

[11] *Borrower Defense Data and Reports at the Institutional Level-January 21, 2022* available through the National Student Legal Defense Network https://www.defendstudents.org/foia/borrower-defense#Borrower-Defense-Data-and-Reports-at-Institution-Level

[12] Press Release, US Department of Education, *Education Department Approves $3.9 billion Group Discharges for 208,000 Borrowers Who Attended ITT Technical Institute, Department Also Initiates the Formal Process to Recoup Approved Borrower Defense Claims from DeVry University* (Aug. 16, 2022) https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute

updated Program Participation Agreement ("PPA") signature requirements.[13] The PPA provides the conditions for a school's participation in any Title IV, Higher Education Act program. The Department's updated policy provides that corporations or entities "that have, or could have, a direct or indirect effect on the institution's financial responsibility"[14] may be required to sign the PPA to ensure financial responsibility.

The policy stipulates, "By co-signing the PPA, the entities…agree to assume liability for financial losses to the federal government related to the institution's administration of the *Title IV* programs."[15] Instances when the Department will generally require additional signatures include, among others:

- "if the institution goes through a change of ownership;"[16]
- "if the Department has approved a significant number of borrower defense or false certification claims for the institution, or if there are a substantial number of these types of claims under review that, if approved, would result in the potential for significant liability."[17]

Current Department of Education data indicate poor outcomes for University of Phoenix students

The University of Arkansas currently provides well-regarded programs that lead to positive outcomes for its students. The most recent Department of Education data, for instance, show a retention rate for first-time students returning for a second year of 87% and a graduation rate of 70%.[18] The most recent data for University of Phoenix, in contrast, show only a 39% retention rate and just a 14% graduation rate.[19] Only 48% of University of Phoenix former students earn more than a high school graduate.[20] If the deal to add University of Phoenix as an affiliate of the

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[13] Federal Student Aid, *Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education*, Electronic Announcement ID: General-22-16 (Mar. 23, 2022) https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] National Center for Education Statistics, College Navigator-University of Arkansas https://nces.ed.gov/collegenavigator/?q=University+of+Arkansas&s=all&id=106397#retgrad Retention rate is the percentage of first-time students seeking a bachelor's degree who return for the second year of school. The graduation rate is based on the percentage of the school's first-time, full-time students graduating within 150 percent of the expected time to completion.

[19] Data included here is for the University of Phoenix's largest reported campus. National Center for Educational Statistics, College Navigator-University of Phoenix-Arizona https://nces.ed.gov/collegenavigator/?q=University+of+Phoenix&s=all&id=484613#retgrad

[20] US Department of Education, College Scorecard-University of Phoenix-Arizona, Typical Earnings https://collegescorecard.ed.gov/school/?484613-University-of-Phoenix-Arizona

UA System is finalized, the UA System will need to ensure that the outcomes associated with the new institution are substantially improved or it could risk reputational damage to the University of Arkansas System,[21] as well as potential consequences with the U.S. Department of Education and other regulators.[22]

Finally, the University of Phoenix has over 140,000 enrollees, compared to approximately 77,000 for the UA System.[23] We urge a careful assessment of the potential for this affiliation to overwhelm the UA System.

We encourage the Board of Trustees to give careful consideration to the matters we have raised and to conduct its own investigation into the merits of this transaction. We appreciate your consideration, and we are available to provide additional information and meet with you to discuss these concerns.

Respectfully,

Center for American Progress
New America Higher Education Program
Project on Predatory Student Lending
The Institute for College Access & Success
Veterans Education Success
David Halperin, Attorney
Robert Shireman, Senior Fellow, The Century Foundation

cc: Members, Board of Trustees
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[21] *See* Robert Shireman, *The Covert For-Profit*, The Century Foundation (Sept. 22, 2015)("Colleges emphasize that they are public or nonprofit because these labels mean something. The labels certify that everything the college does, including how it spends its money, is overseen by trustees who are not seeking personal financial gain. They are vouching for the institution, and they affirm that there are valid educational or other charitable purposes behind every penny spent by the institution." https://tcf.org/content/report/covert-for-profit/

[22] Id. ("Covert for-profit colleges"–for-profit colleges that have sought to switch their schools to nonprofit status to escape regulatory burdens while continuing to gain financially, "cost the public by misleading consumers, dodging taxes, and evading regulations that apply to Education Department Financial aid.") For discussion of the additional risks to public institutions when outsourcing online degrees, *see* collaborative report from New America and The Century Foundation, *Outsourcing Online Higher Ed: A Guide for Accreditors* (June 28, 2021) https://tcf.org/content/report/outsourcing-online-higher-ed-guide-accreditors/ and Stephanie Hall, *Invasion of the College Snatchers*, The Century Foundation (Sept. 30, 2021) https://tcf.org/content/report/invasion-college-snatchers/

[23] Enrollment numbers are non-cumulative, 12-month enrollment across all campuses.

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