



June 3, 2024

Dr. Bonifacio Garcia
President
South Baylo University
1126 North Brookhurst Street
Anaheim, CA 92801

sent via email to: bgarcia@southbaylo.edu

Re: Provisional/Letter of Credit Alternative
OPE ID: 02597300
Financial Statements FYE: June 30, 2023

Dear Mr. Garcia:

The Atlanta School Participation and Financial Analysis Division (ASPFAD) has completed its review of the fiscal year ended June 30, 2023 audited financial statements of South Baylo University (SBU).

In assessing the financial strength of SBU, our financial analyst reviewed the financial statements using the indicators that are set forth in regulations at 34 C.F.R. § 668.171.

Financial Ratios 34 C.F.R. § 668.171(b)(1)

These financial statements yield a composite score of 1.6 out of a possible 3.0. A minimum score of 1.5 is necessary to meet the requirement of the financial responsibility standards.

Deficiency Notification

Our review of SBU's financial statements disclosed a reporting deficiency. SBU reported a balance of \$3,751,565 for Property, Plant and Equipment (PPE) at June 30, 2023. On its Financial Responsibility Supplemental Schedule, SBU reported 100% of this PPE as pre-implementation. However, SBU may only report PPE purchased prior to July 1, 2019 as pre-implementation, and this amount should be reported net of depreciation, disposals, or other reductions in book value.

All PPE purchased July 1, 2019 or later must be reported as post-implementation, purchased with or without debt. SBU's Statements of Cash Flows for fiscal years ending June 30, 2020, 2021, 2022, and 2023 report total purchases of PPE in the amount of \$307,487. This



Atlanta School Participation & Financial Analysis Division
61 Forsyth Street Room 18T40-01
Atlanta, GA 30303

PPE, net of depreciation, disposals, or other reductions in book value, must be reported as post-implementation, purchased with or without debt.

To facilitate a more efficient review of future financial statements, it is important that SBU's subsequent financial statements submissions be prepared according to the Department's regulations.

Audit Opinions and Disclosures 34 C.F.R. § 668.171(h)

SBU's audited financial statements disclosed substantial doubt about the Organization's ability to continue as a going concern due to recurring net deficiencies in net assets:

Substantial Doubt about the Organizations Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Organization will continue as a going concern. As discussed in Note 20 to the financial statements, the Organization has suffered recurring net deficiencies in net assets, and has stated that substantial doubt exists about the Organization's ability to continue as a going concern. Management's evaluation of the events and conditions and management's plans regarding those matters are also described in Note 20. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to that matter.

NOTE 20 - CONTINGENCIES

Going Concern

As shown in the accompanying financial statements, the University incurred a net deficiency in net assets of \$1,993,82 and has sustained multiple years of recurring net deficiencies to net assets. Those factors, as well as the uncertain timeline in which construction may complete for its LA Branch campus to restore the facility for use from flood damage, create a substantial doubt about the University's ability to continue as a going concern for the year following the date the financial statements are available to be issued. Management of the University has evaluated these conditions and has proposed a plan to increase student enrollment, thereby increasing tuition revenue, seek outside and related party charitable contributions, and increase cash reserves through sales of assets. The Board Chair has agreed to reduce the monthly rent of the LA Campus from \$49,400 to \$20,000. The University has also paid off all its long-term debts from the sale of a jointly held property in Virginia and has listed the remaining real property to which the University holds title including the Anaheim campus facilities. The University will reassess its operations to ensure that its resources are used more efficiently, including analyzing employee productivity and reduce unnecessary expenditures. The financial statements do not include any adjustments that might be necessary if the University is unable to continue as a going concern.

In view of its failure to meet the financial responsibility standards, SBU may continue to participate in the Title IV, HEA programs by electing one of two alternatives:

1. Financial Protection Alternative (34 C.F.R. § 668.175(c)):

Under this alternative, SBU is required to submit financial protection in the amount of \$636,025. This amount represents 50% of the Title IV, HEA program funds received by SBU during its

most recently completed fiscal year. By choosing this option, SBU qualifies as a financially responsible institution.

2. Provisional Certification Alternative (34 C.F.R. § 668.175(f)):¹

Under this alternative, SBU is required to submit financial protection in the amount of \$127,205 and be provisionally certified for a period of up to three complete award years. This amount represents 10% of the Title IV, HEA program funds received by SBU during its most recently completed fiscal year.

SBU must comply with all of the requirements specified for the Provisional Certification Alternative in 34 C.F.R. § 668.175(f), including the Zone Alternative in 34 C.F.R. § 668.175(d)(2) and (3), and Requesting Funds 668.162(d), including the disbursement of Title IV, HEA program funds under the Heightened Cash Monitoring 1 Payment Method (HCM1). By electing this option, SBU acknowledges that it has not met the U.S Department of Education's (Department) standards of financial responsibility.

Compliance with Zone Alternative Requirements:

Method of Payment – SBU is required to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method as described under 34 C.F.R. § 668.162(d).

Under HCM1, SBU must first make disbursements to eligible students and parents and pay any remaining credit balances before it requests or receives funds for the amount of those disbursements from the Department. The funding request may not exceed the amount of the actual disbursements that were made to the students and parents included in the funding request. Providing the student accounts are credited before the funding requests are initiated, SBU is permitted to draw down funds through the Department's electronic system for grants management and payments, G6, for the amount of disbursements it made to eligible students and parents. All credit balances must be paid prior to draw down of funds, even if the student/parent

¹ If SBU elects the Provisional Certification Alternative to continue their participation in the Title IV, HEA programs, the Department will require the owner entities (in additions to the institution) to execute new participation agreements. The Department will also conduct a further review to determine whether personal signatures are required.

Section 498 of the Higher Education Act of 1965, as amended (HEA), (20 U.S.C. § 1099c), gives the Department the authority to require the assumption of personal liability (or financial guarantees) from individuals who own or exercise substantial control over institutions. 20 U.S.C. 1099c(e)(1)(B) provides that the Secretary may, to the extent necessary to protect the financial interest of the United States, require the assumption of personal liability by an individual who exercises substantial control over an institution participating in Title IV programs. Under these provisions, personal liability may be imposed for financial losses to the federal government, student assistance recipients, and other program participants for funds under Title IV, and for civil and criminal monetary penalties authorized under Title IV.

Link to Electronic Announcement on Personal Signatures:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-03-01/establishing-personal-liability-requirements-financial-losses-related-title-iv-programs>

signed a credit balance authorization in the past. The use of credit balance authorization forms is prohibited.

The Records First requirement also means that institutions on HCM1 that are participating in the Direct Loan program will have their Current Funding Level reduced to the greater of Net Approved and Posted Disbursements or Net Draws (processed payments less all refunds, returns, offsets, and drawdown adjustments). In the event of returning to Advanced Funded status, the institution will be expected to continue processing Direct Loan awards as Records First until the next Direct Loan global funding increase is processed.

Please refer to the document titled: Reminders and 2023–24 Funding Authorization and Disbursement Information Attachment to March 2023 Electronic Announcement posted to the Knowledge Center for additional information:
<https://fsapartners.ed.gov/sites/default/files/2023-03/Reminders2324FundingDisbInfo.pdf>

Notification Requirements - SBU is required to provide information to the ASPFAD via email to FSAFinancialAnalysisDivision@ed.gov and the Document Management System found at the Common Origination and Disbursement Web Site: <https://cod.ed.gov/cod/LoginPage> no later than 10 days after any of the oversight or financial events, as described below, occur. SBU must also include with the information it submits, written notice that details the circumstances surrounding the event(s) and, if necessary, what steps it has taken or plans to take, to resolve the issue. Please upload your response into the *HCM1 Monitoring* folder. (Please refer to the *Presentation Title: Partner Eligibility and Oversight Services Document Center* training podcast posted to the Knowledge Center web site for specific uploading instructions: [Partner Eligibility and Oversight Services Document Center | Knowledge Center.](#))

- Any adverse action, including probation or similar action, taken against SBU by its accrediting agency, any state agency or other federal agency;
- Any event that causes SBU, or a related entity as defined in the Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in SBU's or related entity's most recent audited financial statements;
- Any violation by SBU or its owners of any loan agreement;
- Any failure of SBU or its owners to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity/net assets from SBU or its owners by any means, including by declaring a dividend;
- Any losses that are unusual in nature or infrequently occur or both as defined in accordance with Accounting Standards Update 2015-01 and ASC 225; or
- Any filing of a petition by SBU or its owners for relief in bankruptcy court.

Action Required

SBU must notify the ASPFAD in writing within 14 calendar days of receipt of this letter of the selection of one of these two alternatives including which form of financial protection SBU will provide to continue participation in the Title IV, HEA program funds. SBU is required to provide

information to the ASPFAD via email to Michael.Connors@ed.gov and the Document Management System found at the Common Origination and Disbursement Web Site: <https://cod.ed.gov/cod/LoginPage>. Please upload your response into the *School Response to Options Letter* folder. (Please refer to the training podcast posted to the Knowledge Center web site for specific uploading instructions: [Partner Eligibility and Oversight Services Document Center | Knowledge Center](#)).

In view of its failure to meet the financial responsibility standards, SBU may provide the required financial protection by electing to provide a letter of credit or cash surety. Our records indicate that SBU currently has \$127,205 cash surety on file in Escrow Account # 0643. *If SBU elects to continue participating under the Provisional Certification Alternative, this financial protection is sufficient and SBU is not required to provide additional financial protection at this time.*

The Department holds the financial protection to satisfy any debts and liabilities owed to the Department that are not otherwise paid directly by the institution, and provides to the institution any funds not used for the purpose during the period for which the financial protection was required, or provides the institution any remaining funds if the institution subsequently submits other financial protection for the amount required (34 C.F.R. § 668.175 (h)). Debts and liabilities may arise in the event that SBU closes or terminates classes at other than the end of an academic period. It assures the Secretary that funds would be available from which to make refunds, provide teach-out facilities, and meet institutional obligations to the Department.

Irrevocable Letter of Credit (LOC) Requirements

The LOC must be made payable to the Secretary, U.S. Department of Education.

A sample LOC is enclosed. SBU's LOC must be issued by a United States bank that is insured by the Federal Deposit Insurance Corporation (FDIC). Your lending institution must use this format on its letterhead with no deviation in the language contained therein. The LOC must provide coverage until July 31, 2025. The LOC must be received prior to 45 calendar days from the date of this letter.

Please mail the LOC to the following address:

Kai Kimbrough, Director
Performance Management Group
U.S. Department of Education
Federal Student Aid
830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

SBU is required to notify the ASPFAD within three calendar days, in the event the LOC issuing institution should fail, resulting in financial transactions and operations being administered by the FDIC. SBU will also be required to submit a new replacement LOC issued by a different and non-failed U.S. bank insured by FDIC, within 45 calendar days.

Cash Surety Requirements

If SBU elects to submit cash surety, SBU must immediately notify the Department so that an escrow account to hold the funds can be established. The Department will provide instructions on how to submit the cash surety separately if this option is selected. The cash surety must be received within 45 days from the date of this notification.

Please note if SBU fails to provide the required financial protection within 45 calendar days the institution will also be subject to termination under 34 C.F.R. § 668.86, revocation of its Program Participation Agreement or denial of a pending application for recertification. Also, please note that information regarding the financial protection may be released to the public under the Freedom of Information Act.

If you have any questions regarding the financial responsibility determination or disagree with the reason or methodology used for this determination, please contact Michael Connors, Financial Analyst, within 14 calendar days at Michael.Connors@ed.gov.

Sincerely,



Christopher Miller
Division Chief
Atlanta School Participation and Financial Analysis Division

CM/tl

Enclosure: Sample Irrevocable Letter of Credit

cc: Accreditation Commission for Acupuncture and Herbal Medicine info@acaom.org
CA Bureau for Private Postsecondary Education bppe@dca.ca.gov
David Garza, Division Chief, San Francisco/Seattle School Participation Division