

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 15-CI749

COMMONWEALTH OF KENTUCKY, EX REL.  
DANIEL CAMERON, ATTORNEY GENERAL  
Office of Consumer Protection  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601

PETITIONER

V. AMENDED ASSURANCE OF VOLUNTARY COMPLIANCE

MID-CONTINENT UNIVERSITY

RESPONDENT

\* \* \* \* \*

Pursuant to Kentucky Revised Statutes (“KRS”) 367.230, this Amended Assurance of Voluntary Compliance is provided to the Commonwealth of Kentucky, *ex rel.* Daniel Cameron Attorney General by Respondent MID-CONTINENT UNIVERSITY.

BACKGROUND

The Parties previously entered into an Assurance of Voluntary Compliance which this Court formally entered on July 13, 2015 (hereinafter referred to as “First AVC”). Prior to that date, on September 30, 2014 Respondent filed for bankruptcy protection in Case No. 14-50687(2) in the United States Bankruptcy Court for the Western District of Kentucky. The AVC was filed with the approval of the Bankruptcy Court per its Order dated July 1, 2015 [Docket #128]. Attached hereto as Exhibit 1.

Per the terms of the First AVC, paragraph 17:

MCU extended credit to the accounts of students who had applied for and anticipated receiving Title IV aid for academic year 2013-2014, in the amounts of the federal loans

and grants students expected to receive, consistent with the Department of Education requirements for HCM2, in anticipation of students receiving the Title IV funds. ["Applicable Students"] However, MCU could not produce documents satisfactory to the Department of Education to obtain reimbursement for the Title IV funds which it credited to the student accounts and which it believes it was eligible to receive. Petitioner alleges that MCU failed to timely disclose to students that it had extended credit to their accounts for 2013-2014 and that there was a risk that Title IV funds would not be received by MCU.

Further as provided in the First AVC, paragraph 26:

MCU contends that [Applicable Students] are obligated to pay for the educational services they received from MCU without regard to eligibility for Title IV funds. However, MCU agrees that it will offer [Applicable Students] who had applied and would have been eligible for Title IV aid no fewer benefits and protections than they would have received had MCU been able to establish the students' eligibility for Title IV funds to pay for their costs of attending.

Per Paragraph D of the First AVC titled: **"INCORPORATION OF FEDERAL DIRECT LOAN MASTER PROMISSORY NOTE"**:

A copy of the Federal Direct Stafford/Ford Loan Federal Direct Unsubsidized Stafford/Ford Loan Master Promissory Note ("Master Promissory Note") is attached as Exhibit 4. The loans matching the Federal Direct Loan described in Section VI.E.3 below shall include and incorporate all material terms of the Master Promissory Note, including but not limited to grace period, deferment, forbearance, and repayment plans. All terms used in this AVC to refer to the loans described in Section V.E.3 are defined in the Master Promissory Note and interpreted in accordance with the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.*, the Department of Education's regulations, any amendments to the Higher Education Act and the Department of Education's regulations in accordance with the effective date of those amendments, and other applicable federal laws and regulations, all as effective as of the date this AVC is executed by MCU.

Per Paragraph E of the AVC, MCU was required to offer Applicable Students, *inter alia*, repayment terms that as nearly as possible mirrored those which would have been available under federal student aid regulations. Further, MCU was required to offer Applicable Students the option of having their loans discharged under a Closed School Discharge option. Respondent represents that it has complied with these requirements and will provide Applicable Students

with a final notice and opportunity to choose an option provided in the First AVC. The Bankruptcy was originally filed as a Chapter 11 reorganization case but the approved Plan requires a liquidation of Respondent's assets.

The Debtor/Respondent is under an obligation to liquidate its assets, which include outstanding accounts receivable from Applicable Students who Respondent contends owe unpaid amounts to Respondent including Applicable Students who were offered the three (3) Options for repayment in accordance with the First AVC.

The Parties wish to amend the Assurance of Voluntary Compliance in order to clarify the rights of the Parties and students as it regards the liquidation of the Respondent's bankruptcy estate and potential sale of student accounts and to provide for an additional final notice to students regarding their options under the AVC.

The Bankruptcy Court has approved the entry of this Amended AVC by Order dated January 14, 2020 attached hereto as Exhibit 2.

The Parties specifically reaffirm and agree that the terms and conditions of the First AVC and that this Amended AVC are binding upon Respondent, its officers and employees in their official capacity, its successors, and its assigns. In the event that MCU sells, assigns, and/or transfers any note, debt, or account to another person or entity, the terms of the First AVC and this Amended AVC shall continue to govern. Prior to any such transfer, MCU shall notify the proposed transferee in writing of the terms of the First AVC and this Amended AVC.

The provisions of the First AVC are incorporated herein and remain in full force and effect unless specifically addressed herein.

**Details of MCU's notices to students advising them of their rights to repay the loans**

Respondent represents that it has complied with the First AVC's notification requirements for all Applicable Students regarding the opportunity to repay amounts Respondent advanced for students' tuition and fees under Options A, B and C in accordance with the requirements of the First AVC. Respondent further represents that some Applicable Students who did not immediately respond and accept the offered repayment terms have received additional information regarding the availability of repayment Option A on an ad hoc basis if they have contacted Respondent regarding their accounts.

Respondent represents that it has offered Applicable Students who are unable to make the payment dictated by the standard repayment terms of Option A, payment relief available as a benefit similar to that available to borrowers in the Federal Direct Unsubsidized Loan program. These payment plans are offered pursuant to the requirement in paragraph D. of the First AVC.

Respondent represents that it has referred for collection some Applicable Students who have not agreed to repayment terms and Respondent wishes to sell uncollected accounts in liquidation for the benefit of its creditors.

**Terms Applicable to Accounts in Default**

In addition to all rights provided in the First AVC, Respondent agrees to the following terms regarding accounts of Applicable Students in default. Respondent further agrees that any terms of sale of its accounts will include at a minimum the following additional conditions and requirements.

1. The following terms apply only to Applicable Students against whom civil collection actions have not been filed as of December 17, 2019.

2. Respondent or any successor, at least thirty (30) days prior to commencing any civil action to collect debts of an Applicable Student, shall provide said student the "Final Notice" attached hereto as Exhibit 3. Said Final Notice will provide Applicable Students with thirty (30) calendar days from the date of mailing to choose an applicable repayment option under the First AVC (the "Option Period"). If the Final Notice is returned as officially undeliverable by specific rules of the United States Postal Service, said rules being, incorrect address, addressee is not at address (further defined as, unknown or moved) and/or mail claimed, prior to commencing any additional collection action on the account, Respondent or any successor shall use commercially reasonable efforts to identify a current address for the student and shall send the Final Notice to the identified address. The thirty (30) day period for choosing a repayment option shall run from the date of mailing to said address. If such mailing is returned undeliverable or if no address is identified despite Respondent's commercially reasonable efforts, Respondent or any successor shall deliver the Final Notice together with any civil summons and complaint commencing action against the student and provide thirty days for response. Mailing of the Final Notice and non-return of such notice shall be conclusive evidence of receipt for purposes of this AVC.

3. If the mailing of the Final Notice is returned as officially undeliverable by specific rules of the United States Postal Service, said rules being, no postage, incomplete or illegible address and/or minimum criteria for mailability not met, then corrections for said deficiencies shall be made to allow the proper mailing of a second Final Notice to said addressee. The second mailing of the Final Notice shall be provided to the addressee under the Final Notice requirements set forth in Section 2, above.

4. If, upon expiration of the Option Period for an Applicable Student, an Applicable Student has not chosen a repayment plan under the First AVC, Respondent and its successors shall

no longer be obligated to offer such payment plans under the First AVC for that Applicable Student, but may do so at their option. With regard to such students, Respondent or its successors may proceed to collect account balances using all lawful means, including commencement of litigation.

5. In the case of Applicable Students who have previously entered into or hereafter enter into repayment under Option A but later default, Respondent and any successor, at least thirty (30) days prior to commencing any civil action to collect debts of an Applicable Student, shall provide said student a loan rehabilitation opportunity as defined herein and a copy of the Notice of Loan Rehabilitation and associated Application attached hereto as Exhibit 4 and Exhibit 5.

6. Furthermore, for Applicable Students who have previously entered into or hereafter enter into repayment under Option A, Respondent or any successor in interest shall continue to provide repayment plan benefits comparable to those offered by the Department of Education as required by Paragraph D of the First AVC. Specifically and for avoidance of doubt, any successor shall agree to provide income-based and/or income-driven repayment options to students who have entered into a repayment plan under Option A unless the amount owed is reduced to a judgment. Furthermore, any successor shall work in good faith to make such students aware of such repayment plan benefits prior to commencing any civil action to collect amounts in default. MCU and its successors shall provide Applicable Students successfully complying with the terms of such repayment plan benefits all rights to which they would have been entitled under similar federal plans, including forgiveness of all account balances at the conclusion of the payment term.

7. MCU agrees to provide a loan rehabilitation program for Applicable Students who enter repayment according to Option A but later default. Loan rehabilitation is required to be

provided by servicers of federal student loans and is therefore also required by the First AVC and this Amended AVC.

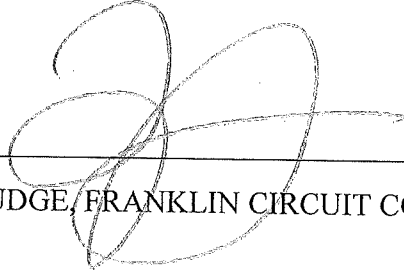
8. Should a student enter rehabilitation and subsequently default again, however, as is the case with federal student aid, Respondent and its successors are no longer under an obligation to offer a rehabilitation plan, although they are not prohibited from doing so.

9. The Parties agree that the Loan Rehabilitation Program as articulated in Exhibit 4 complies with the requirements of the First AVC and the Amended AVC.

10. Except as otherwise provided herein, nothing in this Amended AVC is intended to affect any rights any consumer may have regarding any matter described herein. In addition, nothing in this Amended AVC is intended to be, and nothing in this Amended AVC shall be construed as a waiver by the Respondent of any legal right in connection with any action brought by any person or entity not a signatory to this Amended AVC.

**WHEREFORE**, the parties being in agreement and having agreed to the approval and filing of this Assurance of Voluntary Compliance, the requirements of KRS 367.230 having been met, and the Court being well and sufficiently advised and having jurisdiction and venue pursuant to KRS 367.230, this Amended Assurance of Voluntary Compliance is hereby approved.


DATE: 1/17/2020

  
\_\_\_\_\_  
JUDGE, FRANKLIN CIRCUIT COURT

HAVE SEEN AND AGREED

DANIEL CAMERON  
ATTORNEY GENERAL

By:

  
\_\_\_\_\_  
Don W. Rodgers  
Assistant Attorney General  
Office of Consumer Protection  
Office of the Kentucky Attorney General  
310 Whittington Parkway, Suite 101  
Louisville, Kentucky 40222  
Don.rodgers@ky.gov  
Telephone: (502) 429-7134

Date: 1/17/2020

MID-CONTINENT UNIVERSITY

By:

Date:


  
\_\_\_\_\_  
January 16, 2020



EXHIBIT 1

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY

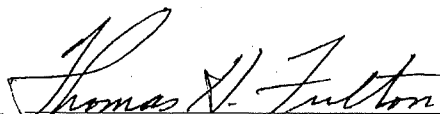
IN RE: Mid-Continent University, Inc.  
Debtor

Case No. 14-50687  
Chapter 11

**ORDER APPROVING AVC AGREEMENT  
NUNC PRO TUNC**

Upon expedited motion of the debtor for approval nunc pro tunc to June 18, 2015, of the Assurance of Voluntary Compliance agreement between debtor and the office of the Kentucky Attorney General and the Court being sufficiently advised, IT IS HEREBY ORDERED that said motion be SUSTAINED and that the said agreement is APPROVED nunc pro tunc as of June 18, 2015.

Entered \_\_\_\_\_



Thomas H. Fulton  
United States Bankruptcy Judge

Dated: July 1, 2015

TENDERED BY:

/s/ Mark C. Whitlow

Mark C. Whitlow, Esq.

Whitlow, Roberts, Houston & Straub, PLLC

P.O. Box 995

Paducah, KY 42002-0995

270-443-4516

453843

**EXHIBIT 2**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY**

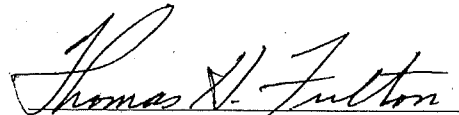
IN RE: Mid-Continent University, Inc.  
Debtor

Case No. 14-50687  
Chapter 11

**ORDER APPROVING AMENDMENT TO AVC AGREEMENT**

Upon motion of the debtor for approval of the Amendment to Assurance of Voluntary Compliance agreement between debtor and the office of the Kentucky Attorney General and the Court being sufficiently advised, IT IS HEREBY ORDERED that said motion be SUSTAINED and that debtor's execution of said agreement is APPROVED.

Entered \_\_\_\_\_.



Thomas H. Fulton  
United States Bankruptcy Judge

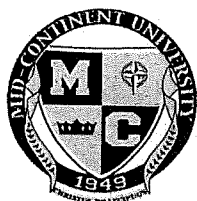
Dated: January 14, 2020

TENDERED BY:

/s/ Nicholas M. Holland  
Nicholas M. Holland, Esq.  
Whitlow, Roberts, Houston & Straub, PLLC  
P.O. Box 995  
Paducah, KY 42002-0995  
270-443-4516  
535437

## EXHIBIT 3

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# MID-CONTINENT UNIVERSITY

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*Office of the Vice President of Finance & Administration*

<Insert date>

<Insert name>

<Insert address>

### **RE: Final Notice – MCU Payment Plan Option A**

<Insert name>

We regret that we must provide you with this **FINAL NOTICE** regarding your delinquent account balance of \$XXXXXX with Mid-Continent University. You have been given detailed information about your charges and payments along with favourable options for payment of your debt, including an **URGENT THIRD NOTICE** for your outstanding account.

Despite requests for payment, we have received nothing to indicate you are planning to pay this bill or that you dispute any of the records of your business transactions with MCU. You are currently beyond all deadline extensions. However, it is the desire of MCU to reach out to you, one final time, by extending the MCU Option A payment plan to you, again.

This Option A plan was created to offer you terms and conditions equal to or better than those you may have been anticipating to receive from the Department of Education while attending MCU, but did not. One of the features of the plan will include a one-time loan rehabilitation benefit, as does the federal loan program. This rehabilitation benefit features a significantly reduced payment obligation for 12 months, which will correct a loan delinquency after 10 consecutive on-time payments have been received.

This is only a general description of the MCU Option A payment plan. All of the information about the plan and its associated legally required documents will be presented to you for your careful consideration. Additionally, the MCU staff, or its representatives, will be available to address any questions you may have.

You are presently at risk that MCU will have to demand that payment of the full amount be made to us as we work diligently to meet our collection obligations to the federal bankruptcy court. MCU will need you to respond to this request for you to address the payment of your balance no later than 30 days after the date of the post mark of this letter, in order to avoid further collection activity. Beyond this date, MCU must reserve the right to commence legal proceedings to recover the debt without further notice to you, and you may be responsible for any associated legal fees or collection costs.

You can find more information about our collection processes by reading the "Amended Assurance of Voluntary Compliance" entered into with Kentucky Attorney General (KYOAG) and approved by the Franklin County Circuit Court. The full text is posted on the University's website at [www.midcontinent.edu](http://www.midcontinent.edu).

## EXHIBIT 3

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All students with questions regarding their records, outstanding obligations or options for repayment are encouraged to contact MCU by calling (270)-251-8900 or by email at [studentloans@midcontinent.edu](mailto:studentloans@midcontinent.edu).

Regards,

*Jim E Walker*

EXHIBIT 4



# MID-CONTINENT UNIVERSITY

*Office of the Vice President of Finance & Administration*

<Insert date>

<Insert name>

<Insert address>

**RE: MCU Payment Plan Option A Default – Notice of Loan Rehabilitation Benefit**

<Insert name>

We regret that we must provide you with this **Notice of Default** on your MCU Option A Payment Plan. Using the rules issued for similar federal Direct Unsubsidized Loans, your default occurred on XX/XX/XXXX. Your delinquent account balance is \$XXXXXX.

To meet or exceed the Direct Unsubsidized Loan rehabilitation benefits of the Department of Education, MCU offers a one-time loan rehabilitation program that is described in detail in the attached Mid-Continent University Option A, Loan Rehabilitation Program document. Please carefully read the information provided. Your selection is to be made at your sole discretion.

Should you choose to use the Mid-Continent University Option A, Loan Rehabilitation Program, you must complete the attached form and return it to MCU by \_\_\_\_\_.

You are currently at risk that MCU will have to demand that payment of the full amount be made, as we work diligently to meet our collection obligations to the federal bankruptcy court. MCU will need you to respond to this request for you to address the payment of your balance no later than \_\_\_\_\_, in order to avoid further collection activity. Beyond this date, MCU reserves the right to commence legal proceedings to recover the debt without further notice to you, and you may be responsible for any associated legal fees or collection costs.

You can find more information about our collection processes by reading the "Assurance of Voluntary Compliance" entered into with Kentucky Attorney General (KYOAG) and approved by the Franklin County Circuit Court. The full text is posted on the University's website at [www.midcontinent.edu](http://www.midcontinent.edu) and the KYOAG website at [KYOAG link and/or contact info inserted here].

All students with questions regarding their records, outstanding obligations or options for repayment are encouraged to contact MCU by calling (270)-251-8900 or by email at [studentloans@midcontinent.edu](mailto:studentloans@midcontinent.edu).

Regards,

*Jim E Walker*

EXHIBIT 5

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**LOAN REHABILITATION PROGRAM  
Mid-Continent University Option A**

**SECTION 1: BORROWER INFORMATION**

Please enter the following information.

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SSN \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Telephone – Primary \_\_\_\_\_

Telephone – Alternate \_\_\_\_\_

Email (Optional) \_\_\_\_\_

**SECTION 2: UNDERSTANDINGS, CERTIFICATIONS, AND AUTHORIZATION**

I understand that:

1. I have received this form because I requested the opportunity to rehabilitate my defaulted loan.
2. If I do not accept the \$5/month payment amount, the loan rehabilitation process will not proceed and I will be required to repay my defaulted loans in accordance with the terms of the Mid-Continent University Option A Promissory Note and applicable law.
3. If I do not provide any supporting documentation requested by my loan holder by the deadline specified, my request for loan rehabilitation will not be considered.
4. If I want to rehabilitate a defaulted MCU Option A Loan that was made jointly to me and my spouse and am requesting a \$5/month alternative loan rehabilitation payment amount, my spouse and I must each sign below.
5. If I rehabilitate a loan and default on the same loan again in the future, I may not rehabilitate that loan a second time.
6. I must notify MCU immediately if my address changes.
7. After my loan is rehabilitated, I may be eligible to repay my loans under an income-driven repayment plan that bases my payment on my income and family size. An income-driven repayment plan is the type of repayment plan most likely to have a monthly payment similar to the payment I made to rehabilitate my loans.

## EXHIBIT 5

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8. I can learn more about the eligibility requirements for income-driven repayment plans by calling MCU or MCU Successor.

9. **Rehabilitation** of your defaulted loan occurs only after you have made 9 voluntary payments of \$5/month within 20 days of the due date during 10 consecutive months. Once you rehabilitate your loans, you will be required to begin making payments under the terms and conditions of your original MCU Option A Promissory Note. You will also have all the benefits of the MCU Option A loan reinstated for as long as you are not in default, including eligibility to apply for deferments or forbearances and for a repayment plan with a monthly payment amount based on your income. After a defaulted loan is rehabilitated, MCU will instruct any consumer reporting agency (credit bureau) to which the default was reported to remove the default from your credit history.

I **certify** that (1) the information that I have provided on this form is true and correct and (2) upon request, I will provide additional documentation to MCU to support the information I have provided in this form.

I **authorize** MCU (and its agents or contractors) to contact me regarding my request or my loans, including the repayment of my loans, at any number that I provide on this form or any future number that I provide for my cellular telephone or other wireless device using automated dialing equipment or artificial or prerecorded voice or text messages.

I **understand** that the first payment of this rehabilitation agreement shall be due on \_\_\_\_\_.

### SECTION 3: LOAN REHABILITATION AGREEMENT

To rehabilitate your loan, you must accept the monthly rehabilitation payment amount of \$5/mo. It is specifically agreed that all funds received under this rehabilitation agreement will be credited against the balance of your Mid-Continent University Option A Promissory Note, attached hereto, which shall be the balance of said Promissory Note at the date and time of the receipt of your first payment under this rehabilitation agreement. Your monthly statement for the Mid-Continent University Option A Promissory Note shall reflect all payments received under this rehabilitation agreement.

This rehabilitation agreement shall not be used as a modification of the terms and conditions set forth in your Mid-Continent University Option A Promissory Note and will be exclusively used for the temporary benefits stated herein, including but not limited to a stay of collection activity set forth in the loan agreement for the period of time that the rehabilitation payments are received under the terms and conditions of this rehabilitation agreement.

To accept the loan rehabilitation agreement, you must sign this form and return it to Mid-Continent University. During the loan rehabilitation period, MCU will limit contact with you on the loan being rehabilitated to collection activities that are required by law or regulation, and to communication that supports the rehabilitation. If you do not accept the \$5/mo. monthly payment amount, your rehabilitation request will not be considered any further.

### SECTION 4: WHERE TO SEND THE COMPLETED FORM

Mid-Continent University  
99 Powell Road East  
Mayfield, Kentucky 42066

EXHIBIT 5

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**Borrower's Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Your spouse must sign this form only if your spouse additionally signed your loan agreement.**

**Spouse's Signature** \_\_\_\_\_

**Date** \_\_\_\_\_