March 16, 2023

Submitted through the Federal eRulemaking Portal: https://www.regulations.gov

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

RE: Department of Education Docket No. 2023-03261

Dear Secretary Cardona

We submit this comment in response to the Department of Education's (hereinafter "the Department") request for public comment on the incentive compensation ban. Online education helps connect students with well-paying career pathways while providing the schedule flexibility which may have otherwise prevented them from enrolling. Online degrees bear the same weight as their traditional equivalents, yet students interested in pursuing online degrees do not receive the same protections against predation related to federal student aid. We urge the Department to immediately rescind the bundled services guidance to ensure online program managers (OPMs) comply with federal law as intended, students are protected, and taxpayer dollars are responsibly invested in higher education programs.

Congress enacted the incentive compensation ban under Title IV of the Higher Education Act of 1965 to disincentivize institutions and their recruiters from using misleading and high-pressure sales tactics. The ban prohibits institutions from making commission-based payments to admissions and financial aid representatives. It is a critical safeguard to protect students from making bad educational investments that could yield catastrophic repercussions for their employment prospects and financial stability. Unfortunately, the Department's 2011 guidance exempting bundled services has resulted in the continued use of the exact practices that Congress intended to prohibit, allowing OPMs to circumvent this important guardrail and mislead prospective students about the quality of their programs.

While for-profit colleges are prolific perpetrators of such abuse, the OPMs function in a way that allow them to hide from students' and the public's perception, because they operates under the cover of public and nonprofit college names. A University of California, Berkeley study analyzing hundreds of contracts between third-party service providers and two- and four-year public universities found that they typically target marginalized students, aggressively extract revenue, hide their activities from students, upsell schools, and include contract terms that force schools to continue partnering with them.[1] Ultimately, by contracting with OPMs, many institutions actively employ the exact kinds of aggressive and even deceptive recruiting practices Congress sought to prevent. In addition, the bundled services exception has caused colleges to cede many of their core functions to unaccountable for-profit contractors. By contracting with OPMs, colleges have effectively outsourced their central responsibilities to unaccredited entities, risking the quality of their programs and potentially harming the reputations of their schools to the detriment of students.[2]

Further, the bundled services loophole has contributed to the rise in student debt, particularly among graduate programs. For example, borrowers in a social work program offered through a tuition-sharing agreement between the University of Southern California and 2U, a public company and OPM, were left with a median debt of $112,00 and median salaries of only $52,000 two years after completion.[3] This debt load was considerably higher than the national median for comparable programs in part because 2U's contract stipulated receiving a majority of the revenue, which largely came out of the federal Grad PLUS loan program. As the Department contends with a variety of policies designed to alleviate the burden of student loan debt, it cannot ignore the fact that OPM-run programs are a significant contributor to those problems. Indeed, the Department is well aware of the consequences of such practices as these kinds of misrepresentations have already formed the basis for billions of dollars in borrower defense discharges.

We urge the Department to rescind the bundled services exception without delay. Students are dependent on the incentive compensation ban to protect them from predatory sales tactics. The Department must ensure that this critical guidance is no longer diluted.

Sincerely,

[1] Hamilton, L.T., Daniels, H., Smith, C.M., & Eaton, C (2022). The private side of public universities: Third-party providers and platform capitalism. *UC Berkeley Center for Studies in Higher Education.* https://escholarship.org/uc/item/7p0114s8

[2] Hall, S. (2023, January 20). *Your OPM isn't a tech platform. It's a marketing firm.* The Century Foundation. https://tcf.org/content/commentary/your-opm-isnt-a-tech-platform-its-a-predatory-marketing-firm/

[3] Bannon, L. & Fuller, A. (2021, November 9). *USC pushed a $115,000 online degree. Graduates got low salaries, huge debts.* The Wall Street Journal. https://www.wsj.com/articles/usc-online-social-work-masters-11636435900

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