March 16, 2023

Nasser Paydar, Ph.D.
Assistant Secretary for Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED–2023–OPE–0030

Dear Assistant Secretary Paydar,

On behalf of the undersigned student, consumer, and borrower advocacy groups, we write in response to the Education Department's examination of bundled services (Docket ID ED–2023–OPE–0030) and an incentive compensation loophole we believe has had significant negative consequences for students and our system of higher education.

We have long supported the strong statutory ban on incentive-based student enrollment compensation, which prohibits institutions from making commission-based payments to admissions and financial aid representatives. Several of us advocated in 2010 for the revocation of "safe harbor" provisions that had previously gutted the statutory requirement. This ban has long been in place to help prevent incentives for institutions and the companies with which and individuals with whom they contract for recruiting students to use misleading and high-pressure recruiting tactics. We continue to believe that the ban has been an important tool in helping to curb some of the most predatory recruiting conduct that occurred in the 2000s.

Unfortunately, the bundled services loophole established through guidance shortly after the 2010 rulemaking remains inconsistent with the statute and regulations. The loophole has allowed institutions to make incentive-based payments to companies with which they contract if the companies provide other services "bundled" with their recruitment activities. At the time the Department issued this guidance, a small number of companies offered bundled services to a small number of colleges. But this loophole has incentivized the dramatic expansion of bundled service agreements, leading to hundreds of colleges paying companies based on the number of students recruited, enrolled, and packaged with financial aid – the exact conduct prohibited by statute. The guidance has had significant negative effects.

First, programs operated by outsourced online program management (OPM) companies have engaged in predatory and aggressive recruiting practices that Congress intended the incentive compensation ban to prevent.[1] As the Government Accountability Office noted last year, "student recruiting is among the most commonly-provided OPM services."[2] Institutions contract with OPMs that employ the exact kinds of aggressive and even deceptive recruiting practices Congress sought to prevent. The 2011 bundled services guidance sought to avoid such situations by requiring schools to maintain an arm's length relationship with their contractors. Instead, OPMs have inappropriately embedded themselves in institutional operations and decision making.

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[1] Hall, S. (2021). Invasion of the College Snatchers. The Century Foundation, https://tcf.org/content/report/invasion-college-snatchers/.

[2] U.S. Government Accountability Office. (2022). *Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers*, https://www.gao.gov/assets/gao-22-104463.pdf.

For instance, many OPM-facilitated programs do not allow prospective students to access basic information about program costs, admissions policies, and faculty – unless they are willing to complete a questionnaire that includes their email address and phone number. Once students hand over their contact information, staff who work for the OPM are charged with repeatedly contacting the prospective student as representatives of the university to recruit them for enrollment. Some OPM contracts include requirements that recruiters attempt to contact every new prospective student up to a dozen times in short timeframes.[3]

Second, colleges have ceded many of their core functions to for-profit, unaccountable contractors. By contracting with OPMs, colleges have effectively outsourced their central responsibilities to unaccredited, unaccountable entities, risking the quality of their programs and potentially harming the reputations of their schools – all to the detriment of their students' interests.

Third, the bundled services loophole has contributed to the rise in student debt, particularly for students who have pursued graduate degrees. As the Department contends with a variety of policies designed to alleviate the burden of student loan debt, it must address the fact that OPM-run programs are a significant contributor to those problems.

Between 2018 and 2021, for instance, Louisiana State University, Shreveport saw a 119 percent increase in graduate enrollment, driven in large part by the addition of Academic Partnerships-run online graduate programs.[4] Consider also the case of the University of Southern California's online Master's in social work program, run by 2U – a program priced at $115,000 for the degree, but for which most graduates earned $52,000 or less two years after completing the program.[5]

Institutions have better options that can ensure they get what they pay for, provide transparency into the prices they charge, and get better value that does not risk putting their students potentially in harm's way. Fee-for-service models, which some institutions already use, provide a better approach for institutions. Ultimately, this approach is also better for the students they enroll.

Additionally, by separating their recruiting needs from other aspects of program management, institutions can identify the most appropriate company (or companies) to assist with each aspect and use different payment models for each. This approach allows institutions to ensure that each aspect of program management is handled by a company best suited to the task – and that they are all following the institution's own standards for governance and academic integrity.

We thank the Department for its move toward strengthening the incentive compensation ban, and we support the following steps to protect students and borrowers:

- Repealing the bundled services guidance, which is fundamentally at odds with the statutory ban on incentive compensation, while allowing institutions appropriate time to renegotiate existing agreements.

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[3] Hall, S. & Dudley, T. (2019). Dear Colleges: Take Control of Your Online Courses. The Century Foundation, https://tcf.org/content/report/dear-colleges-take-control-online-courses/.

[4] Hall, 2021.

[5] Bannon, L. & Fuller, A. (November 9, 2021). "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.

- Ensuring that third-party servicers are subject to robust oversight and accountability measures, including regular reporting requirements and audits.
- Increasing transparency and accountability for OPMs and other third-party servicers – including by requiring them to disclose their financial relationships with institutions, ensuring that institutions retain full contractual authority and decision-making over admissions criteria and enrollment targets, and limiting their ability to control academic decisions.

Together, these actions will better protect students, borrowers, and taxpayers from the harms caused by predatory and unaccountable practices in higher education.

We appreciate the Department's efforts to address the bundled services loophole, and we look forward to working with you to ensure that all students have access to high-quality, affordable, and equitable educational opportunities. Should you have any questions or need further clarification of our recommendations, please contact Dr. Kyle Southern of The Institute for College Access & Success at ksouthern@ticas.org.

Sincerely,

American Federation of Teachers
Center for American Progress
National Consumer Law Center (on behalf of its low-income clients)
New America Higher Education Program
Project on Predatory Student Lending
Student Borrower Protection Center
The Institute for College Access & Success
Veterans Education Success
Young Invincibles

Charlie Eaton, Associate Professor of Sociology, University of California, Merced
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