

March 30, 2023

Annamarie Weisman
Deputy Assistant Secretary for Policy, Planning, and Innovation
Office of Postsecondary Education
U.S. Department of Education

Re: Docket ID ED-2022-OPE-0103
Submitted electronically via [regulations.gov](https://www.regulations.gov)

Dear Deputy Assistant Secretary Weisman,

On behalf of the undersigned student, veteran, faculty, higher education policy, consumer, and borrower advocacy groups, thank you for the opportunity to provide comments on updated guidance regarding third-party servicer obligations, *GEN-23-03 Requirements and Responsibilities for Third-Party Servicers and Institutions*.

The Department of Education's third-party servicer guidance takes welcome and important steps toward protecting students and taxpayers. Because institutions must report their third-party service arrangements, and because third-party servicers must follow the same requirements as the institutions themselves – including requirements governing incentive compensation and substantial misrepresentation – the guidance offers important protections and ensures that the Department can conduct appropriate oversight. Specifically, by clarifying that entities that contract with institutions for student recruitment and retention – and those that prepare and distribute consumer information, and, in some cases, promotional and marketing material for prospective students – are third-party servicers, the guidance ensures that the obligations are well understood by schools and their partners. The guidance also offers improved transparency that will allow the Department to better ensure these arrangements comply with requirements.

We particularly note that the guidance takes critically needed steps to address third-party online program management companies (OPMs). Although the guidance does not prevent the incentives present in instances where colleges and OPMs share revenue over the course of a long-term contract,¹ it takes a crucial first step toward collecting information and conducting oversight – two items of need highlighted by the Government Accountability Office in its 2022 report on the subject.²

There are also numerous small non-profit organizations across the nation offering critical resources and assistance to students, improving the quality of higher education for students, and demonstrably improving college completion. OPMs, on the other hand, are engaged in a combination of recruitment and instructional activities that are more directly akin to recruitment

¹ <https://protectstudentsandtaxpayers.org/wp-content/uploads/OPM-and-incentive-comp-PSAT-letter-to-ED.pdf>.

² <https://www.gao.gov/assets/gao-22-104463.pdf>.

and sales. As student advocates, we believe this practice is misleading. The co-opting of college access and student success language by OPMs is an attempt to blur the lines between OPMs and nonprofit organizations that provide essential investments and support to first-generation students and those otherwise excluded from higher education.

According to publicly available institution-OPM contracts, a number of OPMs assign job titles to their employees like “academic advisor,” “enrollment advisor,” and “student success coach” when, in reality, the individuals in those roles use one-size-fits-all scripts to move students through different points of what is more akin to a sales process – subject to the incentive compensation ban and other federal restrictions on deceptive recruiting practices – than student-centered advising.³ In some cases, OPMs also mislead students by suggesting that their recruiters work on behalf of the institution rather than for a separate company, or by omitting the fact that the program is largely offered by the OPM, rather than the institution.⁴

The guidance will ensure meaningful oversight of third-party companies (including OPMs) by monitoring a host of functions they carry out on behalf of Title IV institutions to ensure compliance with federal rules and regulations.⁵ These activities include:⁶

- interacting with prospective students for the purposes of recruiting or continuing enrollment and providing students information about educational programs, application and document requirements, deadlines, and the enrollment process
- assisting students with the completion of application and enrollment processes
- processing admissions applications
- preparing and/or disseminating promotional materials to market educational programs while also providing technology, curriculum, faculty, or other services related to the design or delivery of educational programs
- providing computer services or software in which the OPM has access to, or maintains control over, systems related to recruitment and enrollment, admissions, registration, billing, and learning management
- monitoring academic engagement and/or daily attendance
- conducting outreach to students regarding attendance or academic engagement
- responding to inquiries from students and/or their families regarding assistance or resources designed to help students maintain enrollment in the institution/program or maintain eligibility for Title IV aid
- providing a percentage of a Title IV-eligible program at an institution

The guidance is the most straightforward way for the Department to monitor arrangements between Title IV institutions and their third-party vendors like OPMs. Third-party servicers have

³ <https://tcf.org/content/report/memo-to-college-leaders-revising-your-opm-contracts-is-in-your-best-interest/>.

⁴ The Department identified such practices as an omission of fact in its recent borrower defense regulations, set to take effect on July 1, 2023.

⁵ <https://www.regulations.gov/document/ED-2022-OPE-0103-0009>.

⁶ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-06-16/written-arrangements-between-title-iv-eligible-institutions-and-ineligible-third-party-entities-providing-portion-academic-program>.

long been subject to compliance audits. These audits simply verify that companies involved in Title IV activities are complying with federal rules.

Especially given the increased risk of Title IV violations among for-profit OPMs, we support the Department in its effort to effectively oversee college arrangements with OPMs and other third parties involved in the administration of Title IV programs.

We appreciate the Department taking this important step to ensure better monitoring oversight and compliance applies to OPMs and other entities engaged in student recruitment and retention, and preparation and distribution of consumer information, promotional and marketing material, as well as other important clarifications in the guidance with regard to other entities that are third-party servicers. If you have any questions or issues for clarification, please contact Beth Stein with The Institute for College Access & Success at bstein@ticas.org.

Sincerely,

American Association of University Professors
Carolyn Fast, Senior Fellow at The Century Foundation
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