October 1, 2020

Sandra Bruce, Acting Inspector General
Robert King, Assistant Secretary for Postsecondary Education
U.S. Department of Education
Washington, D.C. 20202
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Dear Acting Inspector General Bruce and Assistant Secretary King:

We write to urge the Department and the Office of the Inspector General (IG) to investigate the potential violation of the incentive compensation ban, 20 U.S.C. 1094(a) (20), by the University of Arizona (UA). While the Department's 2011 guidance outlines some narrow circumstances under which tuition sharing may be allowable, information shared in a presentation to the University of Arizona Faculty Senate in August 2020 revealed that the school currently has two recruiting contracts in place that appear not to meet the requirements of the guidance, and thus violate the ban on incentive compensation.

The urgency of this matter is elevated by UA's announced intention to engage in further questionable tuition sharing agreements, through a purchase and contracting agreement with Zovio, the owner of Ashford University.

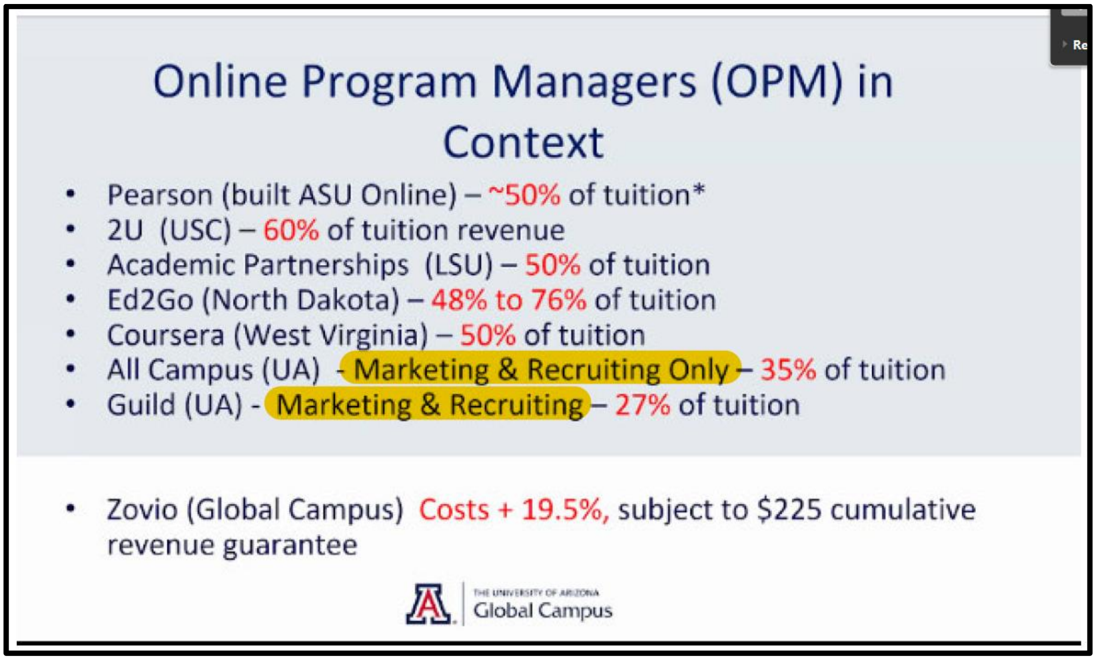
As an initial matter, we agree with the position taken by the Inspector General that the 2011 guidance (GEN-11-05) regarding "bundled services" contracts (frequently referred to as online program management contracts, or OPMs) is contrary to the statutory incentive compensation ban[1] and that OPMs currently engaged in bundling service contracts involving recruiting are in violation of the statute. We are mindful, also, that the Inspector General's office has so far deferred to the department's 2011 guidance and has not sought to overturn it or to contradict it in enforcement activities.

The Department, however, has thus far failed to enforce even the terms of its own guidance. We ask that the Department and the IG act now with regard to these contracts. On August 19, 2020, Vice Provost for Global Affairs, Brent White, made a presentation to the University of Arizona Faculty Senate to discuss UA's plan to establish a nonprofit entity, University of Arizona Global Campus (UAGC). Under the plan, UAGC will acquire some of the assets of Ashford University

[1] "[W]e non-concurred on that portion of the guidance that permits third parties that provide a bundle of services to an institution, including recruiting, to be compensated by a percentage of revenue earned by the institution. We do not believe that the existing statutory ban on incentive compensation allows any incentive payments to entities involved in recruiting based on their success in enrolling students." U.S. Department of Education, Office of Inspector General Semiannual Report to Congress, No. 62. At 11

in return for a long-term contract with Zovio to provide the new online school with a suite of services.

At that meeting, it was revealed that the university is currently party to two tuition-sharing contracts that include recruiting and that fail to meet the terms of 2011 guidance regarding "bundled services" contracts. One of the requirements for complying with the guidance is that the bundled services be a full suite of services "including marketing, enrollment application assistance, recruitment services, course support for online delivery of courses, the provision of technology, placement services for internships, and student career counseling." At the meeting it was revealed that UA is paying 35 percent and 27 percent tuition shares to All Campus and Guild, respectively, for services that only include marketing in addition to recruiting (see below; highlight added).



The 2011 guidance describes a fulsome list of services in which the contractor is engaged not only in finding and enrolling students but also in providing the program's operational backbone in terms of technology and student support. Nothing in the 2011 guidance suggests that an institution enters an incentive compensation safe harbor simply by sprinkling a bit of marketing on its recruitment efforts.

Non-recruiting components required by the guidance	**Non-recruiting components included in the AU contracts**
marketing	marketing

enrollment application assistance course support for online delivery of courses the provision of technology placement services for internships student career counseling	

Offering marketing services in addition to recruiting does not make someone a bundled service provider.

In addition to the contracts that place UA in current violation, another requirement of the 2011 guidance is that the contractor used by an institution be an "unaffiliated third party," based on the idea that the independence of the third party may offer a safeguard against abuses. The guidance is clear that the institution and the contractor must be separate, "both as a corporate matter and as a decision maker."

The planned UAGC-Zovio arrangement would not appear to meet this test. Under the plan, Zovio and the new entity will be completely reliant on each other for the operation of the institution and will be making decisions jointly regarding budgets and countless other matters. They are affiliated by their joint operation of the institution, and their decisions will by necessity be made together.

The 2011 guidance was written with nonprofit institutions as the intended users. Under IRS rules and the department's own interpretations, revenue-sharing as a major component of an institution's operations render it ineligible as a nonprofit, because it facilitates profit-taking by a private party. The guidance must be read in this context. As a small part of a college's overall operation an OPM may not violate nonprofit norms.[2] A whole-institution OPM, however, is a completely different matter, and is inconsistent not only with the 2011 guidance but also, as the Department pointed out in its analysis of Grand Canyon University, with nonprofit requirements.

[2] Brian Galle, Blog: "Grand Canyon University's Misleading Response to my Testimony," Medium, May 30, 2018, https://medium.com/whatever-source-derived/grand-canyon-universitys-misleading-response-to-my-testimony-7a6822f8afb6

During the period since 2015 that the current UA contracts appear to have been in place,[3] UA has received more than $2 billion in Title IV aid.[4] During that period UA has asserted institutional eligibility in signing its program participation agreement while in violation of the guidance and the incentive compensation ban. As a result, we request that your office investigate whether UA should be required to return these funds to the federal treasury.

Additionally, we request that the Department and the Office of the Inspector General take action to ensure that the UAGC-Zovio proposal is not allowed to proceed given the clear affiliation of the entities in violation of the requirements of the guidance.

Sincerely,

American Federation of Teachers
Americans for Financial Reform
David Halperin, Attorney
Generation Progress
New America, Higher Education Program
National Consumer Law Center, On Behalf of Its Low-Income Clients
Project on Predatory Student Lending
The Century Foundation
The Institute for College Access and Success
Veterans Education Success

[3] "All Campus Forms New Partnerships with the University of Arizona," April 25, 2015. https://web.archive.org/web/20170610061837/http://www.allcampus.com/about-all-campus/news/all-campus-forms-new-partnerships-with-the-university-of-arizona/

[4] According to the direct loan program volume report in the FSA data center, student loans to UA students totaled $259,648,385 in 2018-19.