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COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
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November 7, 2024

The Honorable Miguel Cardona
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Secretary Cardona,

The entire postsecondary education community was relieved in April 2023 when the Department of Education (Department) finally responded to public outcry and withdrew the revised Third-Party Servicer (TPS) guidance originally contemplated by the Biden-Harris administration. I strongly agreed with the sentiments expressed by colleges and universities that testified to the efficacy of online education in allowing colleges, large and small, to offer popular, relevant online courses, degrees, and certifications. Unfortunately, it appears the Biden-Harris administration is planning to radically regulate online education and other services before the Trump administration takes office; this is unacceptable.

As I stated in my April 2023 op-ed, the TPS guidance was “yet another move by an administration that misunderstands the operational dynamics on college campuses and the valuable role that technology plays in postsecondary education today. Congress and the Department should be focused on how to lower the cost of college while increasing access for students, not pushing the policies of fringe advocacy groups at the expense of students and taxpayers.”¹ I stand by my statement and am deeply concerned that this administration may once again act in the interest of progressive stakeholders instead of students.

It has been brought to my attention that the Department is about to regulate on the 2011 Dear Colleague Letter (DCL) (GEN 11-05) that describes how colleges and universities may enter into contracts with third-party servicers that offer bundled services, such as providing online courseware, marketing, and retention services for students.² I implore you to avoid any

¹ Foxx, Virginia. Op-Ed. Inside Higher Education (April 7, 2023).

² Hill, Phill. “Friday Follow Up, Part Deux (October 25, 2024). <https://onedtech.philhillaa.com/p/friday-follow-up-part-duex-20241025>

changes to this guidance without working with Congress to clarify the law lest institutions be left in the dark about their compliance and responsibilities with third-party servicers.

I have strong reservations about any last ditch efforts by an outgoing administration that would disrupt current educational delivery. In fact, my comments about the TPS guidance could well be applied here. Repealing this guidance would demonstrate that the Biden-Harris Department “misunderstands the operational dynamics on college campuses and the valuable role that technology plays in postsecondary education.”³ A recent report from the Government Accountability Office noted that delivery of these services has grown in the last decade.⁴ As of July 2021, services provided by third parties support at least 2,900 online education programs nationwide; the numbers are undoubtedly even higher today.⁵ The vast majority of institutions that contract for such support are public or private nonprofit institutions, and the vast majority of those institutions are baccalaureate degree granting institutions.⁶

Eliminating or revising the guidance now would obliterate a decades old, foundational principle of public-private ed tech partnerships that has worked. Such a change would ignore hundreds of comments that you received in March 2023 from colleges and students testifying to the benefit received from services provided by third-party online program managers (OPMs):

- Morehouse College explained that through its partnership with an OPM, “we were able to launch Morehouse Online in half a year, bringing a Morehouse education to over 550 students from across the country who would not otherwise have benefited from our school's mission. Because of this scale and the benefits of the online modality, we have been able to dramatically reduce tuition rates to half the cost-per-credit when compared to the on-campus program.” Further, “a revenue share partnership makes all of this possible.”⁷
- A Howard University professor stated that “...having [an OPM] partner with Howard University or other Universities is an excellent way to offer students an option in achieving their goals to obtain a college education.”⁸
- St. Bonaventure University said that “[o]ur partnership with an OPM is supported by a revenue share agreement that has allowed us to grow our online program offerings in a way that would not have otherwise been possible due to a lack of resources. The revenue share arrangement awards both parties for not only recruiting new students, but also for seeing them through to their programs’ completion. The OPM is a valuable partner but

³ Id.

⁴ U.S. Gov’t Accountability Office, GAO-22-104463 *Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges’ Arrangements with Online Program Managers* (“**GAO Report**”) 11-12 (April 2022), <https://www.gao.gov/assets/gao-22-104463.pdf>.

⁵ Id. at 12.

⁶ Id.

⁷ Thomas, David. Comments to ED (March 15, 2023). <https://www.regulations.gov/comment/ED-2023-OPE-0030-0184>

⁸ Davis, Marilyn. Comments to ED (March 14, 2023). <https://www.regulations.gov/comment/ED-2023-OPE-0030-0059>

serves only as a support function. We make all admissions decisions, deliver all courses, and set enrollment goals and tuition rates.”⁹

There is uniform support from postsecondary education for contracts with third-party servicers such as online program managers, so I can only assume that a decision to consider reversing the bundled services guidance is because of progressive activists with longstanding opposition to public-private partnerships in education.

Furthermore, this latest maneuver would serve as one last Biden-Harris Department blunder and unleash chaos for institutions, students and the ed tech industry. Not to mention that this would come on the heels of other chaotic actions from the Department, such as the botched FAFSA update and uniformly rejected student loan bailout. The DCL remains the Department’s authoritative guidance in this area. Action limiting or prohibiting such agreements would be contrary to the long-standing interpretation of this framework. In close, I urge you to reconsider the timing of any action that revises or rescinds the DCL.

If you have any questions, please contact my staff at (202) 225-6558.

Sincerely,



Virginia Foxx
Chairwoman
Committee on Education and the Workforce

⁹ Hoffman, Michael. Comments to ED (March 27, 2023). <https://www.regulations.gov/comment/ED-2022-OPE-0103-0135>