NEW AMERICA

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:

Thank you for the opportunity to comment as the U.S. Department of Education (the Department) considers how to improve guidance related to the incentive compensation prohibition under title IV of the Higher Education Act of 1965, particularly with respect to bundled services (ED–2023–OPE–0030). New America's higher education program is a team of researchers, storytellers, and advocates from diverse backgrounds who engage in thoughtful analysis, shedding light on the thorniest issues in higher education and developing student-centered federal policy recommendations. We are dedicated to making higher education more equitable and accountable, fighting for inclusion rather than exclusivity, so that everyone has the chance to obtain an affordable, high-quality education after high school. We are a voice for students, telling hard truths when institutional interests dominate policy discussions, making us well-suited to respond to this request. We welcome the opportunity to discuss our comments further, and our contact information is included at the end of this letter.

New America is happy to see the Department take on the important task of ensuring its guidance is consumer-focused and addresses issues related to accountability for both institutions of higher education and their partners and contractors. The language below reflects an expanded version of oral comments that members of the New America team gave during the listening session conducted on March 8, 2023. We have also signed onto comments that were submitted by The Institute for College Access and Success (TICAS) and that represent a broad coalition of organizations working on behalf of students, veterans, faculty and staff, civil rights advocates, and researchers.

Sincerely,

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In 2011, the Department of Education created an exception to the long-standing legal prohibition on paying recruiters financial incentives to enroll students. Such payments were allowed, in the form of revenue-sharing, if recruitment was bundled with other services. This bundled services loophole was and is inconsistent with statute (as noted by the Department itself) and regulation.[1] In the 12 years since, we have learned a great deal about how the higher education market responded to these incentives and have seen that this arrangement has had significant consequences that are borne immediately by students and eventually by taxpayers. Now is the time for the Department to take stock of that experience, and adjust its guidance accordingly.

A major weakness of the bundled services exception is that it does not meaningfully account for how big or small the different parts of the bundle can be. Take 2U, the largest of the online program managers (OPMs) that provide bundled services to colleges in exchange for a percentage of tuition that can exceed 60 percent.[2] In its most recent quarterly report to investors, 2U stated that it spent $380 million on marketing in Fiscal Year 2022.[3] That is more than it spent on curriculum and teaching, service and support, and technology and content development—*combined.*

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[1] U.S. Department of Education, Office of Inspector General, *Semiannual Report to Congress, No. 62*, May, 2022, https://www2.ed.gov/about/offices/list/oig/semiann/sar62.pdf

[2] Kevin Carey, "The Creeping Capitalist Takeover of Higher Education," *Huffington Post*, April 1, 2019, https://www.huffpost.com/highline/article/capitalist-takeover-college/

[3] 2U, "Fourth Quarter 2022: Investor Presentation," February 2, 2023, https://s26.q4cdn.com/441000616/files/doc_financials/2022/q4/2023.02.02-4Q'22-Earnings-Presentation-1601.pdf

Marketing is not legally the same as recruitment. But the two go hand in hand. The bundled services loophole directly created incentives for OPM contracts in which the vast majority of student tuition goes to a combination of OPM profits, university profits, and the corporate profits for online advertising giants like Google and Facebook. Expensive online advertising campaigns drive students toward OPM recruiters. By combining enrollment targets with other services and paying OPMs based on the revenue generated, an inherent conflict has been created that incentivizes OPMs to use predatory tactics to recruit students (as described below) and encourages institutions to charge higher tuition.

Marketing and recruitment costs also put upward pressure on college prices, particularly in graduate school programs where tuition is unconstrained by hard caps on federal borrowing. For example, between 2018 and 2021, 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] In addition, the University of Southern California's online master's in social work program, run by 2U, costs $115,000, but most graduates earned $52,000 or less two years after completing the program.[5] Many students struggle to pay their loans back, or do not pay them back, leaving the cost to taxpayers.[6]

OPMs can play a large role in designing online courses and helping schools move existing courses online.[7] And students often cannot tell the difference between programs run by institutions and those managed by OPMs.[8] Eighty percent of Americans believe online education programs should cost less than in-person programs, according to New America's Varying Degrees survey.[9] And just under half of Americans agree that it is worthwhile to borrow for predominantly online programs, compared to 68 percent who agree that it is worthwhile to borrow for in-person instruction.[10] But, especially given the predatory practices employed by OPMs, many of these students may feel like they have no other choice.

For instance, Eastern Kentucky University will 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 they do, Pearson staff

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[4] Stephanie Hall, *Invasion of the College Snatchers,* The Century Foundation, September 30, 2021, https://tcf.org/content/report/invasion-college-snatchers/

[5] Lisa Bannon and Andrea Fuller, "USC Pushed a $115,000 Online Degree. Graduates Got Low Salaries, Huge Debts," *The Wall Street Journal*, November 9, 2021, https://www.wsj.com/articles/usc-online-social-work-masters-11636435900.

[6] Sarah Sattelmeyer and Tia Caldwell, *In Default and Left Behind*, New America, November 30, 2022, https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/

[7] U.S. Government Accountability Office, *Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers*, April 5, 2022, https://www.gao.gov/products/gao-22-104463

[8] Lisa Bannon and Rebecca Smith, "That Fancy University Course? It Might Actually Come From an Education Company," *The Wall Street Journal*, July 6, 2022, https://www.wsj.com/articles/that-fancy-university-course-it-might-actually-come-from-an-education-company-11657126489

[9] Rachel Fishman, Sophie Nguyen, and Louisa Woodhouse, *Varying Degrees 2022*, New America, July 26, 2022, https://www.newamerica.org/education-policy/reports/varying-degrees-2022/

[10] Ibid.

repeatedly contact the prospective student, acting as representatives of the university, to attempt to recruit them for enrollment.[11] The Learning House, a Wiley subsidiary, contractually requires that its recruiters attempt to contact every new prospective University of West Florida student thirteen times—for ten consecutive days.[12]

Institutions have better options. Fee-for-service models, which some already use, mean colleges only pay for the services they need, they understand the prices they are charged, and they retain control over their programs. Institutions could also separate their recruiting needs from other aspects of program management. By using one contractor for marketing and recruitment activities and another contractor for academic services, institutions can identify the most appropriate company to assist with each aspect, use different payment models for each, and follow standards for governance and academic integrity. Other institutions may wish to bring the entire operation in-house.

Now is the time for the Department of Education to change the incentives to end this harmful, debt-financed spiral of market and recruitment expenses and bolster its future enforcement efforts. Rescinding the bundled services guidance (DCL GEN-11-05) will help ensure that institutions comply with federal law, students are protected from predatory actors, and taxpayer dollars are responsibly invested.

[11] Stephanie Hall and Taela Dudley, *Dear Colleges: Take Control of Your Online Courses*, The Century Foundation, September 12, 2019, https://tcf.org/content/report/dear-colleges-take-control-online-courses/
[12] Ibid.