



March 30, 2023

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

Submitted electronically

Docket ID #: ED-2022-OPE-0103-0009

Dear Deputy Assistant Secretary Weisman,

I am writing on behalf of The Institute for College Access and Success (TICAS) to comment on the Education Department’s recently updated guidance regarding third-party servicers (TPS) – entities that enter into agreements with institutions of higher education (institutions) to administer any aspect of an institution’s participation in Title IV programs. TICAS is a nonprofit, nonpartisan organization advocating for student-centered public policies that promote affordability, accountability, and equity in higher education. TICAS has a long history of advocating for student and taxpayer protections, including effective monitoring and enforcement to ensure compliance with statutes and the Department’s regulations.

TICAS strongly supports the guidance, and we believe it is a critical step to protect students, as well as taxpayer investment in Title IV. As institutions outsource a growing number of functions to third-party providers, this guidance ensures that institutions are transparent about these relationships and their terms, that third parties clearly understand their obligations (including complying with incentive compensation limitations and regulations governing substantial misrepresentations), and that the Department has the information it needs to conduct oversight regarding TPS arrangements. Such arrangements should include institutional relationships with entities offering any part or percent of a Title IV program at an institution (e.g., curriculum development and delivering instruction and learning assessment). We appreciate that the Department has solicited comments on this important guidance and granted additional time for institutions and third parties to understand and comply with the guidance.

The requirements regarding TPSs have existed in statute since 1992, and the Department has issued regulations and repeatedly offered guidance on the types of entities and arrangements that fall within the TPS definition. TPS requirements should ensure that when an institution contracts with a TPS, that the TPS follows the same rules the institution must follow related to Title IV. Entities that are TPSs are

subject to annual audit requirements and are held to the same standard of compliance as the institutions. For their part, institutions must also be transparent about their TPS arrangements.

As explained by the updated guidance document, the Department intends to address and clarify obligations on two areas where non-compliance with the TPS requirements has been documented: 1) arrangements where outside entities – often referred to as online program managers (OPMs) – contract with institutions to offer some combination of services including student recruiting, retention, and financial aid packaging for online programs (often graduate programs); and 2) non-Title IV-eligible entities that contract with institutions to provide instructional content subject to limitations specified in Department regulations. The Department has offered revised guidance on student recruiting, retention, consumer information, and instructional content.

Recruitment and Retention. The new guidance clarifies that entities providing services “intrinsically intertwined” with Title IV aid, *including* recruitment of prospective students and application and retention related activities, are third-party servicers. This is a critical clarification, as there is both a well-documented recent history and a long history of predatory recruitment of students, particularly by for-profit colleges.¹ The Department and other consumer agencies, including the Federal Trade Commission, the Consumer Financial Protection Bureau, and the state attorneys general, have repeatedly documented misleading, deceptive, and sometimes fraudulent recruiting practices by some schools. By clarifying that outside entities that carry out these services for schools are, in fact, TPSs, the Department offers a needed deterrent to the deceptive and misleading recruiting tactics that too often follow outsourcing institutional functions.

Moreover, the guidance ensures that OPMs are TPSs subject to transparency requirements, which will allow for the much-needed monitoring of OPM arrangements documented by the Government Accountability Office.² OPMs provide not just recruiting, but also retention services that directly implicate the statutory ban on incentive compensation.

We strongly support efforts by small non-profit organizations – often philanthropically-funded – to provide evidence-based supports that improve college persistence and completion, particularly among low-income and first-generation students. These organizations provide engagement and retention services, but generally do not receive remuneration from institutions. To that end, we suggest that the Department revisit Gen-Q1 regarding small entities that do not receive (or exchange) remuneration and do not have a contract with an institution are TPSs.

We further note that audit requirements have a potential imbalance of administrative complexity and cost versus the risk posed by nonprofit TPSs that have both small contracts and low overall annual

¹ Roberts, W. & Parker-Blair, M. (2019). *Predatory For-Profit Colleges Benefit From Washington’s Culture of Corruption*. Center for American Progress, <https://www.americanprogress.org/article/predatory-profit-colleges-benefit-washingtons-culture-corruption/>; Ament, A. & Menon, A. (2019, November 24). Predatory For-Profit Colleges are Back. It’s Time to Stop Them. *Hechinger Report*, <https://hechingerreport.org/opinion-predatory-for-profit-colleges-are-back-its-time-to-stop-them/>; Student Borrower Protection Center. (2021). Mapping Exploitation: Examining For-Profit Colleges as Financial Predators in Communities of Color, <https://protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping-Exploitation-Report.pdf>; Halperin, D. (2022, December 13). Facing Collapse, For-Profit ASA College Makes Troubling Moves. *Republic Report*, <https://www.republicreport.org/2022/facing-collapse-for-profit-asa-college-makes-troubling-moves/>.

² 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>.

revenues, and we encourage some additional guidance about the relative risk posed by these types of organizations.

Consumer Information. We strongly support the inclusion of consumer information-related activities in covered third-party provided services. Deceptive and misleading consumer disclosures for job placement, employment prospects, transferability of credits, and accreditation have been widespread. Misrepresentations in consumer disclosures and marketing materials provided to prospective students have proven costly to taxpayers, as the Department has discharged the debts of students at ITT Tech and Corinthian Colleges, among other schools on the basis or pervasive misrepresentations around these issues.

Students who based their educational decisions on these misrepresentations continue to await relief in far too many instances. We are encouraged by the Department bolstering its ability to monitor arrangements in which third parties prepare and disseminate consumer disclosures, and in cases where the TPS also provides other services to the institution. In some cases, large scale preparation and dissemination of marketing materials in and of itself would seem to provide sufficient basis for an entity to meet the definition of a TPS. Additional examples in the Question and Answer section of the guidance could prove helpful on this point.

Instructional Content. We have increasingly seen curriculum development, learning assessment, and instruction outsourced to third parties, including, but not limited to OPMs. The Department has also identified significant non-compliance in reporting on the portion of specific programs offered by ineligible entities, in violation of regulations. By clearly explaining that entities offering these services are TPSs, the Department improves its ability to ensure that institutions and TPSs comply with requirements and to monitor these arrangements.

Thank you for the opportunity to provide our views. Should you have questions regarding these comments, we welcome the opportunity to discuss them further. Please contact Dr. Kyle Southern, Associate Vice President for Higher Education Quality, at ksouthern@ticas.org.

Sincerely,

Sameer Gadkaree
President