STUDENT BORROWER PROTECTION CENTER

March 16, 2022

Secretary Miguel Cardona
United States Department of Education
830 First Street, N.E.
Washington, D.C. 20002

RE: Improving Guidance on the Incentive Compensation Ban, Particularly with Respect to Bundled Services

Dear Secretary Cardona,

The Student Borrower Protection Center (SBPC) appreciates the opportunity to comment on the incentive compensation prohibition under Title IV of the Higher Education Act (HEA).[1] This comment period and its associated listening sessions mark an opportunity for the Department of Education (ED) to initiate the long-overdue changes necessary to protect students, defend institutional and programmatic quality, and push predatory actors out of the Title IV landscape.

In 2011, ED did something many of us have done before—it made a mistake. Two decades prior, in 1992, Congress had banned schools participating in the Title IV program from paying recruiters or their own employees "any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid."[2] Lawmakers advanced this so-called "incentive compensation ban" in response to widespread reports of schools and their agents focusing far more on driving enrollment and pocketing aid disbursements than on maintaining program quality.[3] In these cases, students were left saddled with huge, unaffordable debt burdens while schools cashed in on the effectiveness of their high-pressure, misleading sales tactics.

Against this backdrop, analysts have hailed the incentive compensation ban as a massive success in rooting out many of the higher education industry's worst enrollment practices.[4] But in 2011, ED took the fateful step of creating a loophole by which schools' agents would be exempt from the incentive compensation ban if they provided recruitment services as part of "a variety of bundled services" that could include tasks such as "support for online delivery of courses, the

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[1] https://www2.ed.gov/about/offices/list/ope/bundlservhearnoticefinak.pdf
[2] https://www.congress.gov/102/statute/STATUTE-106/STATUTE-106-Pg448.pdf#page=180
[3] See, e.g., testimony of Hon. Maxine Waters https://files.eric.ed.gov/fulltext/ED342332.pdf#page=55 ("Abuses by private, for profit vocational schools have become not only a national scandal, but a national tragedy. Many of these schools' antics entice students to enroll based on misleading, if not completely false, representations. Many of the students find that the training or materials provided are inadequate, if not completely meaningless; that potential jobs at a living wage are not available at all upon graduation; that available jobs, such as in the security guard field, do not requireany advance training or experience; or that inadequate training received at schools does not qualify students to obtain or retain employment.").
[4] See, e.g., https://tcf.org/content/report/policies-work-dont-work-stop-predatory-profit-colleges/

provision of technology, placement services for internships, and student career counseling."[5] Intended as a compromise to come alongside the Obama administration's rescission of certain Bush-era exemptions to the incentive compensation ban,[6] this "bundled services" loophole was framed as a time-limited band-aid that would help public and nonprofit institutions build out online course offerings so that they could compete with web-based programs already available at for-profit schools.[7] ED's inspector general insisted at the time that the bundled services exemption violated the HEA,[8] but the policy nevertheless moved forward.

Over the subsequent decade, this loophole grew into a multi-billion dollar boondoggle.[9] Students have endured stunning harm at the hands of low-quality courses offered pursuant to the bundled services exception,[10] while companies and executives across the booming industry for so-called "online program managers"—which specialize in the provisioning of bundled services including recruitment—have enjoyed windfall payouts.[11] Moreover, schools have generally become *more* dependent over time on OPMs for their online course offerings,[12] allowing OPMs to exert increasing influence over schools' decision-making and belying the hope that the bundled services exemption would be a limited fix.[13] Meanwhile, at every step, ED has all but entirely failed to supervise and appropriately hold bad actors accountable in this space.[14]

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[5] https://fsapartners.ed.gov/sites/default/files/attachments/dpcletters/GEN1105.pdf

[6] See https://www.insidehighered.com/digital-learning/views/2019/10/30/shaky-legal-ground-revenue-sharing-agreements-student-recruitment

[7] Id ("Why did the Obama administration OK the OPM bundling despite objections raised by the inspector general? Lobbyists using the names of trusted and politically powerful universities certainly made a difference. Beyond that, policy makers, including myself, wanted to view the companies as white-hat warriors helping to build nonprofit and public alternatives to predatory for-profit online colleges. Over time, the theory was, the innovation and competition that they would infuse into the field of online higher education would bring down tuition and elevate quality."); https://www.theatlantic.com/education/archive/2016/06/for-profit-companies-nonprofit-colleges/485930/ (describing the genesis of the bundled services exemption by saying, "When the Obama administration began looking for ways to rein in for-profit marketing and compensation, some OPM companies asked specifically if tuition-sharing deals would be allowed. According to [former senior Department of Education official Bob Shireman], the Department of Education agreed to the idea of tuition-sharing in public and nonprofit schools because they saw it as unfair to let for-profit colleges function as 'one big bounty-paid recruiter' but bar public and non-profits from the similar practice. As a result, according to Shireman, nonprofit and public colleges effectively employ the same tactics for their online programs as the for-profits do—the aggressive, profit-driven marketing; the incentives to sell higher-cost and lower-quality programs; and promises about ease of financing a college education—because they are expressly allowed to.")

[8] https://www.insidehighered.com/digital-learning/views/2019/10/30/shaky-legal-ground-revenue-sharing-agreements-student-recruitment

[9] https://iblnews.org/the-pandemic-accelerates-the-opm-business-universities-pay-4-billion-a-year/ (placing industry-wide OPM revenues at $4 billion per year)

[10] See generally, https://protectborrowers.org/wp-content/uploads/2022/06/SBPC_TCF_CFPB-OPM-letter.pdf#page=2

[11] See, e.g., https://www.sec.gov/Archives/edgar/data/1651562/000119312522091748/d331267ddef14a.htm#tx331267_20 (showing that Coursera CEO Jeffrey Maggioncalda was paid $20 million over two years), https://www.sec.gov/Archives/edgar/data/1459417/000145941722000011/a2022proxystatement-defini.htm#i2e0205c7f03c4f2bbbf678db45ccd02a_52 (showing that 2U CEO Chip Paucek was paid $30 million over the past three years)

[12] https://tcf.org/content/report/invasion-college-snatchers/, https://tcf.org/content/report/memo-to-college-leaders-revising-your-opm-contracts-is-in-your-best-interest/

[13] Id.

[14] See https://protectborrowers.org/wp-content/uploads/2022/06/SBPC_TCF_CFPB-OPM-letter.pdf

It is long past due for ED to acknowledge the mistake it made in 2011 and fix it. That remedy can come only as a full, immediate rescission of the bundled services exemption and a restoration of the full spirit and scope of the incentive compensation ban.

In support of this conclusion, SBPC offers the following observations regarding the bleak higher education landscape that the bundled services exemption has produced:

- ***The bundled services exemption has given rise to the same bad incentives and predatory practices that necessitated the incentive compensation ban in the first place.*** The business model made possible by the bundled services exception has proven lucrative for both schools and OPMs, with industry-wide revenues estimated at $4 billion per year and slated to rise to $10 billion per year by 2025.[15] However, available evidence indicates that these windfalls have arrived not as a result of the successful provisioning of valuable educational services, but rather through the effectiveness of OPMs' high-pressure efforts to drive student enrollment.[16] The use of these tactics is necessarily incentivized by the fact that OPMs that engage in tuition-sharing—as is allowed through the bundled services exemption—are essentially paid on a per-head basis.

  The presence of these incentives and the business patterns they induce are illustrated by the trajectory of the University of Southern California's (USC) OPM-managed Master's in Social Work (MSW) program. USC's MSW was highly ranked and widely respected, but it was constrained in efforts to capitalize on its trusted brand by limitations on the sheer number of students it could accommodate for in-person instruction. In response, USC partnered with the OPM 2U, Inc.—making USC the first university client for the then-young company—to launch an online version of the MSW program in 2010.[17]

  From there, as outlined in lengthy reports by the *Los Angeles Times* and the *Wall Street Journal*, the situation quickly deteriorated.[18] MSW enrollment quadrupled, but faculty noted that many newly recruited students may not have been ready for the program, with up to 40 percent of admitted students in some years being "conditional" admits who did not meet a 3.0 GPA minimum or other standards.[19] Student debt burdens began growing far out of pace with enrollment, with one analyst estimating that 13 percent of annual federal student debt disbursements to masters-level social work programs eventually came from USC while the school awarded only 5 percent of MSW degrees.[20] Meanwhile, salaries among program graduates remained extremely low relative to debt levels, with

[15] https://iblnews.org/the-pandemic-accelerates-the-opm-business-universities-pay-4-billion-a-year/
[16] https://tcf.org/content/report/invasion-college-snatchers/?agreed=1
[17] https://www.wsj.com/articles/usc-online-social-work-masters-11636435900
[18] See https://www.wsj.com/articles/usc-online-social-work-masters-11636435900, https://www.wsj.com/articles/usc-officials-diverge-on-plan-to-end-contract-with-online-provider-11637788200, https://www.latimes.com/local/lanow/la-me-usc-social-work-20190606-story.html
[19] https://www.latimes.com/local/lanow/la-me-ln-usc-social-work-finances-20190508-story.html
[20] https://twitter.com/HerdaBrett/status/1511394515361349638

the median MSW student taking on $112,000 of federal loans while going on to earn only $52,000 or less two years after course completion.[21] Journalists have noted that students in an MSW at nearby California State University, Long Beach graduated with "less than a third" of the debt of USC MSW students and earned 14 percent more two years later.[22]

Underlying these outcomes were high-pressure recruitment tactics of the kind that only incentive-based compensation could explain. Reports indicate that recruiters at 2U are generally "expected to make 70 to 100 recruiting calls on most days, and managers sen[d] messages to those who fell behind."[23] A former 2U recruiter reported that students would receive so many emails, calls, and text messages that they would "get irate and say 'Stop calling me.'"[24] The company spends almost half of its revenues on marketing and sales—more than three times its expenditure on curriculum and teaching.[25] Moreover, in the USC case and elsewhere, 2U is empowered to contact students in ways that are likely to blur the line between OPM and university employees. These tactics include using university ".edu" email addresses and "equipment that makes it look as if its recruiters are calling from universities' area codes."[26] For the company, these are savvy business practices; as one of 2U's founders once said, "The more invisible we are, the better."[27]

2U now faces private litigation based in part on the aggressiveness of its recruiting practices at the USC MSW,[28] but estimates indicate that it already pocketed almost $400 million from its involvement in this program from 2013 to 2020.[29] Students, meanwhile, have often been left with low salaries and huge debts based on what they thought would be attendance at a brand-name school.[30]

Unfortunately, the pattern of OPMs driving enrollment at students' expense in the name of incentive-based compensation is not limited to USC or to 2U.[31] For example, in 2009 the private nonprofit college Concordia University in Oregon hired the OPM HotChalk to help it offer an online version of its Master's in Education program.[32] This arrangement

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[21] https://www.wsj.com/articles/usc-online-social-work-masters-11636435900
[22] Id.
[23] https://www.wsj.com/articles/that-fancy-university-course-it-might-actually-come-from-an-education-company-11657126489
[24] Id.
[25] https://www.sec.gov/ix?doc=/Archives/edgar/data/1459417/000145941723000004/twou-20221231.htm#
[26] https://www.wsj.com/articles/that-fancy-university-course-it-might-actually-come-from-an-education-company-11657126489
[27] https://www.huffpost.com/highline/article/capitalist-takeover-college/
[28] https://defendstudents.org/news/students-file-lawsuit-against-usc-and-2u-for-deceptive-enrollment-scheme
[29] https://www.wsj.com/articles/that-fancy-university-course-it-might-actually-come-from-an-education-company-11657126489
[30] https://www.wsj.com/articles/usc-online-social-work-masters-11636435900
[31] See, e.g., https://www.forbes.com/sites/carolinehoward/2014/02/12/no-college-left-behind-randy-bests-money-making-mission-to-save-higher-education/?sh=1949e1a914a2 (describing the business of the OPM Academic Partnerships by saying, "it's also a lot of telemarketing. Of the more than 400 workers employed by [the OPM] Academic Partnerships, 50% work the phones--and the e-mails--in a sprawling [recruitment] call center . . . The three Rs here being recruitment, retention and revenue.")
[32] https://cusfacts.com/concordia-university-portland/

would ultimately become a case-in-point example of how bad deals between OPMs and schools create risks not just for online students, but for entire institutions.

Through HotChalk, enrollment in Concordia's program increased almost eightfold in only five years,[33] eventually making the school "the single biggest provider of education master's degrees in the nation."[34] HotChalk took in as much as 80 percent of tuition revenue for its services,[35] while federal student loan disbursements grew such that "Concordia students in 2014-2015 received more from the government's leading graduate loan program than students at any Ivy League school but Columbia."[36] Journalists have estimated that Concordia paid HotChalk one in three of its overall revenue dollars from 2009 through 2014, including the OPM receiving almost $60 million in 2013 alone—a payout that amounted to"nearly half of all Concordia's revenues."[37]

Behind the scenes, however, HotChalk's enrollment-based incentives had once again led the OPM to deploy damagingly aggressive enrollment strategies. A 2013 whistleblower suit from three former enrollment staffers at HotChalk alleged that HotChalk ran a "classic boiler room" where recruiters were directed to mislead borrowers in the name of driving student sign-on, including by dangling "phony 'scholarships.'"[38] This move echoes a notorious practice of more traditionally structured for-profit colleges: creating a false sense of urgency among prospective students through gestures to purportedly time-limited "scholarships" and other supposedly pressing deadlines.[39] HotChalk staffers also stated that they "were never supposed to tell students they worked for HotChalk" (journalists later found that several people appeared to work for HotChalk and Concordia at the same time[40]), that the company "showered successful recruiters with perks that included a trip to Las Vegas," and that "HotChalk instructed recruiters to approve all applicants, whether or not their grade-point averages met admission standards."[41]

Federal prosecutors eventually joined the whistleblower case and alleged in 2015 that the contract between Concordia and HotChalk promised the OPM "75 percent of online tuition" with an additional 5 percent cut "whenever HotChalk exceeds 3,000 enrollments in a single year," creating a clear incentive for the OPM to push ruthlessly for student sign-up.[42] Concordia and HotChalk eventually settled with the government for $1 million

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[33] https://www.huffpost.com/highline/article/capitalist-takeover-college/
[34] Id.
[35] Id.
[36] Id.
[37] https://www.oregonlive.com/portland/2016/10/concordia_gained_thousands_of_new_students_--_and_a_federal_inquiry.html
[38] https://www.huffpost.com/highline/article/capitalist-takeover-college/
[39] https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf#page=70
[40] https://www.oregonlive.com/portland/2016/10/concordia_gained_thousands_of_new_students_--_and_a_federal_inquiry.html
[41] Id.
[42] Id.

without admitting fault, and the college later closed.[43] Students, as is so often the case when OPMs enter the picture, were left holding the bag.

These two examples are only the tip of the iceberg,[44] and research shows that the student populations enrolled as a result of OPMs' aggressive tactics are disproportionately Black and low-income.[45] OPMs behave this way precisely because of the incentives at play when they are paid on a per-head basis.[46] Explicitly or implicitly, these companies know that there is a linear relationship between the number of students they can enroll and the number of dollars they can report as revenue. These incentives are magnified by the nature of OPM ownership, as recent investments by private equity and venture capital firms demanding large, quick returns have been found to push OPMs further toward "the targeting of marginalized students, extraction of revenue, privatization by obfuscation, for-profit creep, and university captivity."[47]

For as long as the bundled services exemption remains in place, OPMs will be empowered to operate a business model based around student bounties. 2U and HotChalk illustrate how effective OPMs are in doing precisely that—and the fallout that this conduct generates for students.

- ***The bundled services exemption has accelerated the hollowing out of public and nonprofit colleges.*** As discussed above, the bundled services exemption was meant to serve as a limited tool to help public and nonprofit schools develop online course capabilities that could compete with those available at for-profits. The record, however, shows that this loophole has proven to be less of a narrow change than a wide entry point

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[43] https://www.insidehighered.com/news/2020/02/14/warning-signs-concordia-university-portlands-closure-which-now-stretches-across#

[44] See, e.g., https://www.chronicle.com/article/they-didnt-care-inside-one-universitys-sputtering-online-partnership-with-2u (citing one professor at a college that partnered with an OPM to offer an online version of its physician's assistant program by saying that the OPM "was basically trying to turn our PA program into a cash cow. . . . They made it obvious that they didn't care about the quality of the program."); see also https://www.regulations.gov/comment/ED-2023-OPE-0030-0013 (where one commenter to this docket who works as a "Financial Aid Administrator . . . at a large public 4-year university" noted, "My primary concerns center around the rapid growth of online programs leading to exceptionally high debt levels, especially for the graduate student population. During the past decade, I have observed a significant increase in the number of graduate students who exhaust their Federal Unsubsidized loan limit of $138,500.00 and borrow Graduate PLUS loans to fund advanced degree programs. I have also observed an increase in the number of students pursuing 2nd or 3rd master's degrees. . . . There are students with Graduate PLUS debt exceeding $300,000 at our institution. This is in addition to borrowing the maximum undergraduate and graduate aggregate limit of $138,500.00.")

[45] https://researchcghe.org/perch/resources/publications/working-paper-87.pdf

[46] https://www.insidehighered.com/views/2022/05/11/gao-report-online-program-managers-was-only-start-opinion ("[B]y 2015 it was clear that . . . the revenue-share model encouraged OPMs to promote the programs generating the largest profit: the most expensive, least selective ones."); https://www.forbes.com/sites/carolinehoward/2014/02/12/no-college-left-behind-randy-bests-money-making-mission-to-save-higher-education/?sh=1949e1a914a2 (quoting one former OPM executive saying, "If a school depends on an OPM to market its online program, that program had better cost more, admit more, and pay the OPM more. Otherwise, OPMs have better, more profitable options and I know for a fact that happens at some OPMs.")

[47] https://escholarship.org/content/qt7p0114s8/qt7p0114s8_noSplash_1847d6a649017454cecf88b9e9e9961e.pdf

for schools' eventual corporate capture. In particular, schools appear to generally grow *more* dependent on enrollment-incentivized OPMs over time, not less, helping those companies eventually exert a growing role in schools' educational and other key decisions.

An important starting point for understanding this pattern is the sheer amount of money that OPMs and their aggressive, enrollment-incentivized recruitment tactics are often able to generate for schools. In the doomed Concordia case, for example, HotChalk was reported to have briefly boosted the college's revenues "fourfold to $173 million" from 2009 to 2014, leading Concordia's year-end surplus to grow by a factor of ten even after the hefty tuition share paid to the OPM.[48] Dynamics such as these are common across the OPM space, with administrators at institutions that contract with OPMs regularly referring to the programs they deliver as a "cash cow."[49] In some cases, OPMs have come to account for more than half of enrollment at certain schools.[50]

With this outsized financial role comes leverage for the OPM to deploy for its own ends through increasingly harsh and invasive demands in contract negotiations with schools. As U.S. Senators Elizabeth Warren, Sherrod Brown, and Tina Smith recently noted in a letter to OPM industry executives,[51] OPMs' contracts with schools have come to include penalties if the university "lowers tuition, raises admissions standards, or otherwise reduces revenue,"[52] each of which could threaten the OPM's bottom line. Researchers have described how in many contracts, "the OPM is granted formal decision-making power over key educational decisions, becoming a partner in controlling curriculum development, enrollment targets, and budget decisions."[53]

And as OPMs expand their reach across schools' operations, they cement their grip by making their contracts with schools extremely hard to exit. In instances where researchers have been able to access agreements between schools and OPMs—which are often shielded from open records laws, despite their clear importance to public institutions—they have noted a range of terms that could "make it nearly impossible" for schools to back out of a bad deal.[54] These provisions include demands that schools provide notice years in advance if they desire to end an agreement, automatic renewals, and non-compete type terms that prevent schools from seeking similar services from

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[48] https://www.oregonlive.com/portland/2016/10/concordia_gained_thousands_of_new_students_--_and_a_federal_inquiry.html
[49] https://www.huffpost.com/highline/article/capitalist-takeover-college/; https://www.chronicle.com/article/they-didnt-care-inside-one-universitys-sputtering-online-partnership-with-2u?.
[50] https://tcf.org/content/report/invasion-college-snatchers/
[51] https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20(OPMs)_.pdf
[52] Id.
[53] https://tcf.org/content/report/invasion-college-snatchers/
[54] https://tcf.org/content/report/dear-colleges-take-control-online-courses/

other OPMs down the road.[55] Moreover, these contracts tend to be designed to last for extremely long periods. The contract between USC and 2U for the management of the MSW program discussed above, for example, is slated to run through 2030,[56] while a 2U contract with the University of California, Berkeley to manage an online master's degree in information and data science has a 15-year timeframe.[57] In all, one researcher found that more than half of OPM contracts last at least half a decade.[58]

As OPMs burrow into schools in more profound and longer-lasting ways, the rationale for the bundled services exemption that they depend on becomes more tenuous. Rather than being an opening for nonprofit and public schools to get a leg up on for-profits, this loophole presents itself as a back door for for-profit companies and incentives to slither into other sectors of higher education.

If that seems like an exaggeration, one need only consider the phenomenon of schools introducing distinct online "campuses" by buying or entering into exclusive partnerships with for-profit colleges that act as an OPM, and that rely on the bundled services exemption as a central pillar of their business model. In 2017, for example, Purdue bought the online for-profit college Kaplan University for $1, creating a platform called Purdue University Global that pays 12.5 percent of revenues to Kaplan for its OPM services.[59] Advocates have gone on to cite the school for having low graduation rates, high student debt burdens, and a dismal track record of student loan repayment.[60] Yet it continues enrolling students and getting them into debt, all by leveraging Purdue's trusted brand.

The University of Arizona system attempted a similar move, buying the for-profit online college Ashford University from the company Zovio for $1 in 2020, renaming the digital school as the University of Arizona Global Campus (UAGC), and promising to pay Zovio almost 20 percent of tuition revenue that the public system's appendage generated in return for exclusive OPM services.[61] Ashford's accreditor had previously raised "longstanding concerns" about program quality,[62] and those issues appeared to not have improved under the UAGC brand.[63] California Attorney General Rob Bonta, for example, alleged in a lawsuit that "Zovio continues to provide the same misleading enrollment and marketing services to the University of Arizona Global Campus as it previously provided

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[55] Id.
[56] https://www.wsj.com/articles/usc-officials-diverge-on-plan-to-end-contract-with-online-provider-11637788200
[57] https://www.wsj.com/articles/that-fancy-university-course-it-might-actually-come-from-an-education-company-11657126489
[58] https://tcf.org/content/report/dear-colleges-take-control-online-courses/
[59] https://www.huffpost.com/highline/article/capitalist-takeover-college/
[60] https://vetsedsuccess.org/purdue-global-kaplan-recent-actions-and-concerns/
[61] https://www.highereddive.com/news/university-of-arizona-global-campus-terminates-contract-with-zovio/628603/; https://www.republicreport.org/2022/arizona-global-campus-is-still-ashford-inside/
[62] https://wascsenior.app.box.com/s/12jkbe12q54kzc5g2xa79oqbtizm4759
[63] https://www.insidehighered.com/news/2022/01/19/university-arizona-global-faces-multiplying-woes

to Ashford,"[64] and state policymakers in Arizona complained about the school's poor outcomes.[65] The UAGC-Zovio OPM deal ultimately fell apart—a University of Arizona official cited a "fundamental difference between our institutional missions"[66] across the university system and Zovio—potentially putting tens of thousands of students at risk.[67]

These types of agreements represent extreme versions of for-profit actors and incentives worming their way into the nonprofit and public sectors. But they are emblematic of the business practices and associated harms that the bundled services exemption has created. For as long as those incentives remain present in the Title IV space, the place of public and nonprofit higher education will continue to erode.

- ***ED has failed to step in or establish a meaningful oversight apparatus in the OPM space, even as it has become clear that the bundled services exemption has produced widespread harm.*** The damage that the incentive compensation ban has produced was facilitated not just by ED creating the loophole in the first place, but also by the agency subsequently failing to conduct meaningful oversight of OPMs' involvement in the Title IV program.[68] None of the varieties of or mechanisms for harm described above are a secret to ED—public reports,[69] investigative findings,[70] and missives from members of the U.S. House[71] and Senate[72] alike have highlighted how OPMs relying on the bundled services exemption use deceptive marketing and lofty, frequently false promises to drive students into massive debt for low-quality courses. Yet even in the face of this pervasive smoke, ED has proven uninterested, unwilling, or unable to begin searching for fire. A recent GAO report, for example, found that:[73]
    - ED does not even know for sure how many arrangements there are between schools and OPMs;
    - ED's audits of colleges' relationships with OPMs are so weak that schools can often pass through them with their OPM deals going wholly unexamined, generally because ED does not even know that such arrangements exist; and

[64] https://oag.ca.gov/news/press-releases/attorney-general-bonta-continues-fight-hold-ashford-university-accountable
[65] https://facultygovernance.arizona.edu/sites/default/files/SenMin%202.7.22%20mb.pdf#page=7
[66] https://www.highereddive.com/news/president-speaks-university-arizona-global-campus-uagc-cut-ties-opm/638420/
[67] https://www.highereddive.com/news/university-of-arizona-global-campus-terminates-contract-with-zovio/628603/
[68] https://protectborrowers.org/wp-content/uploads/2022/06/SBPC_TCF_CFPB-OPM-letter.pdf
[69] https://protectborrowers.org/pushing-predatory-products-how-public-universities-are-partnering-with-unaccountable-contractors-to-drive-students-toward-risky-private-debt-and-credit/; https://tcf.org/content/report/dear-colleges-take-control-online-courses/.
[70] https://www.wsj.com/articles/usc-online-social-work-masters-11636435900.
[71] https://www.youtube.com/watch?v=qh9so6p2VOs.
[72] https://www.wsj.com/articles/democratic-senators-probe-whether-online-degree-programs-contribute-to-high-student-debtloads-11642203842; https://www.chronicle.com/article/they-didnt-care-inside-one-universitys-sputtering-online-partnership-with-2u?.
[73] https://www.gao.gov/assets/gao-22-104463.pdf

- ED has handed over key responsibilities for diligence over OPMs to schools, but college staff often do not know the details of the services that OPMs provide, and in some cases colleges have withheld information from ED on their contracts with OPMs without apparent recourse.

The GAO notes that ED has implemented one of the two recommendations that came with its report,[74] but no clear effort has been made to more generally re-shape accountability in the OPM space at the scale necessary to ensure student safety.

Moreover, given that the incentive compensation ban already saw "under-enforcement" by ED even before 2011, there is little reason to think that such efforts will ever arrive.[75] ED has not so much as bothered to distinguish in data on student outcomes (such as that available through the College Scorecard) between online and in-person course offerings when, as is often true with OPMs, both are available for a given program.[76] Instead, the instances cited above appear to evidence that arrangements between OPMs and schools ever end only via business failure, with students left stranded, and never through proactive oversight and enforcement by ED.

The preceding observations all point to a clear path forward: ED should simply rescind the bundled services exemption. This loophole has given rise to the same bad incentives and related predatory behavior that necessitated the incentive compensation ban in the first place, all while proving ill-designed for its stated purpose. Moreover, incentive compensation is simply not necessary for schools to provide online course offerings, which can be expanded through a simpler and more transparent fee-for-service model.[77]

ED might consider a more technical fix or commit to maintaining the regulatory status quo while promising more robust oversight. The track record cited above leaves every doubt that such half-measures will do anything other than preserve the ongoing drumbeat of scandals, lawsuits, and—most importantly—student harm attributable to OPMs. A failure along these lines would likely be extremely lucrative for many of the well-paid industry representatives who will offer comments to ED on this issue, but it would continue to be a disaster for higher education. And as federal student loans pile up that will eventually be discharged through Borrower Defense to Repayment, cancelled due to other protections such as those for false certification, or simply never repaid, the scope and societal cost of OPMs' harmful practices will only grow.

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[74] https://www.gao.gov/products/gao-22-104463
[75] https://tcf.org/content/report/invasion-college-snatchers/
[76] See, e.g., https://collegescorecard.ed.gov/school/fields/?123961-University-of-Southern-California (the program "Social Work — Master's Degree" does not provide an option for viewing data associated only with online students)
[77] https://www.insidehighered.com/digital-learning/blogs/technology-and-learning/qa-opms-noodle%E2%80%99s-john-katzman

Such an outcome cannot—and it need not—arise. Here, now, ED has the opportunity and the obligation to acknowledge the mistake it made in 2011, reverse it, and protect students. By closing the bundled services loophole, it can do exactly that.

Thank you for your time and consideration.

Sincerely,

Student Borrower Protection Center