CHEPP The Center for Higher Education Policy and Practice

March 16, 2023

James Kvaal
Under Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Docket ID ED–2023–OPE–0030

Dear Under Secretary Kvaal:

We write in response to the U.S. Department of Education's ("Department") request for comment on improving guidance on the incentive compensation prohibition under Title IV of the Higher Education Act of 1965, particularly with respect to bundled services. We appreciate the Department updating this guidance to ensure students and their success are centered in institutions' financial decisions and relationships and that federal funds are focused on student success. Additionally, updating this guidance is important given the dramatic shifts in the higher education sector over the last decade. The Center for Higher Education Policy and Practice (CHEPP) is a non-partisan higher education research, policy, and advocacy organization grounded in the experiences of higher education learners and practitioners, affiliated with Southern New Hampshire University (SNHU).

The prohibition on incentive compensation exists to protect learners from actors and behaviors that seek to receive revenue from enrolling students, but do not seek to support learners to succeed post-enrollment or have accountability for student success. While increasing access to higher education can and should be a goal for higher education institutions, a balance of incentives should drive towards learner success when external partners, contracting, and Title IV or student funds are involved. These dual goals should inform and guide the Department's guidance on the prohibition. While needing strong parameters and transparency aligned with the statute, revenue share models should be an option for institutions in their financial relationships. However, how and when those relationships are allowed, and the parameters in which they are allowed, should include several factors, including the contracting entities' tax status. Revenue-share models should only be allowed when there is a demonstrated focus and clarity on post-enrollment activities, including student success, persistence, and degree or credential completion. Given the different incentive structures behind non-profit and for-profit entities, we believe the parameters allowing for revenue share for each should differ.

In cases where the institution and external partner are both non-profits, the Department should allow for revenue share when pre-enrollment activities and resource allocation are *de minimis* within the contract and stated services (versus post-enrollment activities and resources allocation). For example, SNHU revenue shares with several community-based non-profits around the country to co-deliver hybrid education to learners, most often students of color who are working adults and have tried college elsewhere. Under these models, SNHU provides the education, and the community partner provides a range of student supports, including wraparound supports, academic and career coaching, help identifying services, and a physical space for learning. Those partners also do outreach in their communities to educate learners on their options, but it is a very small portion of their activities. However, these entities (particularly given their size and community focus) are only able to provide these services in a sustainable manner due to revenue share being their financial relationship with SNHU.

In cases where the external partner is for-profit, the Department should only allow for revenue share on non-Title IV funding and non-student provided revenue; and services provided in a contract should include post-enrollment supports for persistence and completion. For example, SNHU revenue shares with workforce partners, where employer dollars are largely funding students' tuition. In these cases, a balance of supports for students to enroll in higher education via employer-sponsored benefits and supports through graduation should be part of services provided when utilizing revenue share.

In any of these relationships, revenue share should only be provided while students are actively receiving demonstrated services from the external partner. Additionally, in any of these cases, the Department should prohibit exclusivity agreements and non-compete clauses in contracts, which limit students' options for such services and institutions' ability to seek out the best services and financial relationships on behalf of students. In both scenarios, institutions and external partners should be required to disclose which entities are providing which services.

We also urge the Department to require reporting and transparency on these financial relationships as part of enforcement of the incentive compensation prohibition and any related guidance. As such, we suggest the following reporting and transparency requirements regarding revenue share relationships, including for program review.

- Does your institution contract with any external entities for delivery of education programming, student supports (pre- and/or post-enrollment), securing financial aid, recruitment, and/or marketing?
    - If yes:
        - What are the financial arrangements: revenue or tuition sharing, fee-per-student fees, flat fees, other? How are the fees structured (timing, rates, duration)?
        - What percentage of this revenue comes from Title IV federal aid? What other funds are used to pay these fees (student paid, employer paid, grant paid, etc.)?
        - Is there a separate payment for student recruitment/marketing services provided under the contract?

- Does that external organization include incentive compensation for any employees including gifts, bonuses, award, and salary adjustments, including any payments or things of value based in any part, directly or indirectly, on the success of securing enrollments or financial aid?
- What is the tax status of such entities? Are such entities education institutions or affiliated in some way with education institutions (legally affiliated, have overlapping Board Members, etc.)?
- Is all or any portion of the arrangement exclusive or limiting in any way to your institution? Does any application of the contract, including a financial relationship, continue beyond termination of agreement?
    - Do any payments or revenue share continue beyond termination of agreement, students/employees leaving the institution, or employers providing employer-sponsored education benefits?
- For the following services, which remain in the University's control and/or require approvals under existing contracts?
    - Education content
    - Enrollment targets
    - Marketing materials
    - Financial aid
    - Faculty (qualifications/hiring)
    - Content of academic and student support counseling
    - Use of brand
    - Accessibility for students with disabilities
- How are relationships with external entities communicated to students? How does the University disclose which entities are providing which supports?
- Reporting:
    - Services provided by the contract, including student supports
    - Persistence and retention by program and contract
    - For employer-sponsored benefits,
        - Full-time/part-time working status rates for students
        - Employee pay and changes in pay

Thank you for your consideration and for seeking information on this important matter.

Sincerely,

Jamie Fasteau

Jamie Fasteau
Executive Director