



The Center for Higher Education
Policy and Practice

March 30, 2023

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

Docket ID ED-2022-OPE-0103-0009

Dear Under Secretary Kvaal:

We write in response to the U.S. Department of Education's ("Department") request for comment on the requirements and responsibilities of third-party servicers (TPS) and institutions. We appreciate the Department's effort to increase understanding, oversight, and transparency on TPS and contracts. However, the breadth of entities and activities captured in the updated guidance, as drafted, is so broad that the Department will not likely achieve its stated goals, particularly given capacity considerations at the Department. 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).

Given the large shifts in the higher education sector over the last decade, especially regarding online education, it is understandable that the Department would want transparency on, and increased accountability for, online program managers (OPMs) and other contracted entities providing services to students, particularly related to Title IV and the delivery of instruction. The Department has outlined addressing recruitment and retention, software, education content and instruction, and OPMs as the stated goals of the guidance change. However, as drafted, this guidance will capture a much broader array of entities and activities beyond that stated purpose. By regulating outside of the existing interpretation of the statute, the current draft has also caused confusion in the field which will hinder compliance. Further complicating and impeding compliance is the Department's concurrent comment period on applicable guidance, creating a lack of clarity by institutions as to which requirements they must adhere.

The Department should be concerned that it will not be able to achieve its stated oversight goals for this guidance if the breadth of third-party servicers remains as drafted, given their capacity and confusion in the field. For example, the guidance as currently drafted will capture articulation agreements, apprenticeships, dual enrollment relationships, workforce partnerships, employer sponsored benefits, credit for prior learning partnerships, external partners providing wrap-around services, and study abroad programs. The Department may also want to increase

oversight over these activities but should consider which tools most effectively meet that need without impacting its ability to carry out the stated goals for this updated guidance.

Specifically, we want to raise these additional questions and comments about the current draft guidance.

- **Access to student data:** Under current TPS requirements, third-party services have increased access to student data. As currently drafted, entities such as Google and Meta would be considered TPS. The Department should clarify when and how TPS can access student data.
- **Vendor refusal:** Under TPS guidance, both institutions and TPS have compliance requirements. The updated guidance includes a far broader array of vendors and partners beyond direct delivery of Title IV funds and current practice. As such, this array of entities will likely weigh whether they would like to have this increased legal relationship and oversight from the Department and may disagree with institutions on interpretations of whether or not vendors are TPS under the guidance. That decision will be out of an institution's control; however, the Department's action does not override a contract between an institution and a vendor. What are the implications for new third-party servicers refusing to comply with the guidance? Will an institution be out of compliance with Title IV if the vendor does not comply? If an institution and a vendor do not agree on whether the vendor is a third-party servicer, will there be a process to determine who is correct?
- **Public disclosure:** Many entities not previously captured under TPS would be included under the expanded guidance and new requirements may determine whether they continue to provide services to institutions. One parameter that could impact such a consideration is whether proprietary information could be made public through contract disclosure. Will the Department make information on TPS public? If yes, which information and will that include contracts? Additionally, will contracts and other information be subject to the Freedom of Information Act (FOIA)?
- **TPS data form inconsistency:** The Department has not updated the Third-Party Servicer Data Form to reflect the changes in the guidance, and therefore, which entities would be required to fill out the form and for which activities. Specifically, question 16 asks servicers to identify which Title IV, HEA services they perform from a provided narrow list of services related to facilitating financial aid, which meets the existing interpretation of the statute. The form does not reflect the entities or activities covered in the expanded guidance. Why does this categorization not align with the expanded servicing definition? How should the breadth of newly designated TPS fill out "other"?

Thank you for your consideration of our comments on this matter.

Sincerely,

A handwritten signature in black ink that reads "Jamie Fasteau". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jamie Fasteau
Executive Director