



March 16, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona,

On behalf of the associations listed below, representing two- and four-year, public and private colleges and universities, thank you for the invitation to provide input as the Department of Education considers possible changes to 2011 Dear Colleague Letter on the incentive compensation prohibition and bundled services exception (2011 DCL or 2011 guidance). We appreciate the opportunity to submit written comments on this important topic.

When considering changes in this area, three pillars—transparency, innovation, and good student outcomes—should guide the Department’s process. As the 2022 Government Accountability Office report made clear, there is still much to learn about the current landscape of colleges’ arrangements with online program managers (OPM), which have grown considerably in recent years, and even more to learn about the outcomes for students engaged in OPM-managed instruction.

We appreciated the opportunity to hear from various stakeholders, including institutions and students, at the two-day listening sessions hosted by the Department last week. As the Department heard, there were concerns raised about the revenue sharing model and the potential for misleading or abusive practices at some OPM-managed online programs. At the same time, the Department also heard from a number of public, regional and private non-profit colleges and universities with third-party revenue share agreements, as well as their students, about the value these programs have provided in terms of increased access to high quality online programs, particularly for underserved populations. In some cases, institutions indicated that without the 2011 guidance and the ability to pay on a revenue-share basis, they would be unable to provide these programs.

While the listening sessions provided valuable insights, more information is still needed to help the Department craft policies that will protect students and at the same time, maintain access to high-quality, affordable online degree programs. Balancing these dual priorities is crucial and we are confident that with a better understanding of these arrangements and how they vary across a diverse group of institutions, the Department will be better positioned to ensure the proper guard rails are in place.

In considering changes that may be appropriate to the guidance in this area, we believe that the Department and the higher education community would benefit from greater clarity regarding the variety of these programs, including their intent, scope, economics, and impact. We support the Department's goal of finding ways to improve its sightlines into these relationships, and we also support efforts to encourage greater transparency.

As the Department considers specific changes to the 2011 guidance, as an initial matter, we believe the 2011 DCL would benefit from updating to provide greater clarity regarding the types of bundled services arrangements that the Department believes are beneficial and permissible under law. Some of the terminology and examples of the current 2011 guidance appear outdated, and do not provide the degree of certainty that would be optimal for institutions who are committed to full compliance with the law. In addition to this general observation about the need for greater clarity, we strongly encourage the Department to keep two fundamental principles in mind.

First, it is critical that we strive to help institutions of all kinds serve the needs of an ever-changing population of students. As we saw during the pandemic, online programs are crucial to ensuring our ability to deliver quality post-secondary education programs. Ultimately, many edtech services hold great promise as part of our continuing efforts to provide access to a high-quality postsecondary education. Let's be careful not to do more harm than good, and certainly not to act before we have a good grasp of the entire picture. It is clear that we do not yet know enough to understand what revisions to the guidance will truly serve students. Any proposed changes to existing guidance must be carefully weighed in order to protect students while not stifling the innovation that is so necessary for the success of our students and higher education's future.

Second, we know that the ban on incentive compensation provides important protections for the most vulnerable learners. The Department should make sure that the boundaries of the bundled services exception are clear and that there are appropriate guardrails in place to protect student and taxpayer dollars. This will require a scalpel, not a chain saw, and data-driven conversations about the economic realities of providing online-program design, delivery, and promotion.

Continuing innovation in higher education is essential to broadening the reach and deepening the quality of higher education. Successful innovation requires transparency from all parties and relentless attention to improving student outcomes. This is a complicated and opaque corner of higher education, and we hope the Department will spend the next several months working to understand it better. We look forward to working together as this process moves forward.

Sincerely,



Bundled Services Comment Letter
March 16, 2023

Ted Mitchell
President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Christian Colleges & Universities
Council of Graduate Schools
EDUCAUSE
National Association of College and University Business Officers
National Association of Independent Colleges and Universities