



VETERANS EDUCATION SUCCESS®

March 16, 2023

Ashley Clark
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

RE: Docket ID ED-2023-OPE-0030

Dear Ms. Clark,

I write to submit comments on behalf of Veterans Education Success in response to the Department of Education's Notice regarding "bundled services" guidance, published in the Federal Register on February 16, 2023. Veterans Education Success is a nonprofit research, policy, and student veteran advocacy organization. We work on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill® and other federal postsecondary education programs.

I appreciate the opportunity to offer comments on the 2011 "bundled services" [guidance](#), its deleterious consequences for students and taxpayers, and its corrosive and corrupting effect on higher education institutions.

The 1992 reauthorization of the Higher Education Act imposed an absolute ban on the payment of "any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance." [HEA 487(a)(20)]

In 2011, however, the Department [unilaterally](#) modified the absolute statutory ban on the payment of commissions and allowed institutions to share a percentage of their tuition revenues — essentially, a commission for every "sale" — with "unaffiliated" and "independent" third parties that bundle additional services with recruitment functions. That tortured rationalization of revenue-sharing practices, however, does not make them any less violative of the unambiguous statutory ban. At the time, the Department's Inspector General correctly recorded [non-concurrence](#) with the decision in characteristically sober fashion: "We do not believe that the existing statutory ban on incentive compensation allows any incentive payments to entities involved in recruiting based on their success in enrolling students."

The Department was moved to disregard the underlying legislation as a result of an intensive and orchestrated campaign by sales and marketing operations masquerading as "IT firms" and traditional institutions seeking to quickly expand their online presence with minimal upfront investments. [They sold the Department](#) on the promise that disregarding the ban would enable legitimate, mission-driven educational institutions to better compete with the shoddy for-profit mega-universities that then dominated distance education.

Sadly, but not unpredictably, the guidance has produced the [exact opposite](#) of its intended effects. Instead of creating an ecosystem of accessible high-quality programs, the guidance has imported the worst features of predatory for-profit institutions into traditional higher education and normalized

them through ubiquity. These include saturation marketing, high-pressure sales tactics, lax or nonexistent admissions standards, subpar curricular and instructional offerings, and [exorbitant pricing financed with debt](#). What's more, Online Program Management companies are [increasingly involved](#) in the design and implementation of academic programs in ways that violate even the modest restrictions of the guidance itself.

As the Department contemplates its course of action on the bundled services guidance, it should first answer the question that the February 16 Notice sidesteps, i.e., whether it has statutory authority to allow “*any* commission, bonus, or other incentive payment to individuals or entities based, directly or *indirectly*, on success in securing enrollments or financial aid to *any* persons or entities engaged in *any* Student recruiting or admission activities” [HEA 487(a)(20)]. On its face, it is difficult to imagine how Congress could more emphatically and categorically prohibit the set of practices that the 2011 guidance nevertheless authorizes. Even if there were policy justifications for allowing revenue-sharing linked to recruitment—and there aren't any—the black letter of the law that the guidance purports to interpret clearly prohibits them.

The flagrant contradiction between the guidance with the law and its disregard of the history of commissioned sales notwithstanding, the Department should re-examine the actual policy consequences of allowing OPMs to collect commissions, i.e., the proliferation of high-priced, low-quality online programs fueled by debt. OPMs wrap themselves in the flag of enabling access, and have positioned themselves as technology companies providing expertise that would allegedly be otherwise unavailable to institutions. In fact, as with all technology, what might have been cutting-edge state-of-the-art upon introduction has quickly become commoditized. The IT component of OPMs' offerings might have represented unavailable infrastructure 12 years ago, but are entirely mundane and affordable today. The best proof of this is that at the outset of the pandemic, when institutions had to pivot to online delivery for all of their students, the vast majority did so on their own and without engaging an OPM. The primary function of OPMs, therefore, is not so much their self-presented veneer of providing esoteric technology services, but their true function as online marketing, high-pressure sales, and indiscriminate recruitment firms. Institutional partners of OPMs, driven by embellished promises of new revenues, adopt a position of studied ignorance and willful tolerance of OPM practices that bring to mind the worst excesses of for-profit schools. These practices are sure to generate future reputational and financial losses to the institutions themselves (in the form of borrower defense claims) as well as to the federal government (in the form of unrepayable debt due to low wages resulting from the shoddy educational quality of these programs).

It is high time for the Department to recognize and remedy its mistake and comply with the statutory ban by rescinding the bundled services guidance altogether. The proliferation of substandard high-cost distance education programs facilitated by the fundamentally corrupt commissioned sales technique has hurt not only students and taxpayers but also higher education institutions, the legitimacy of whose programs has been compromised by OPMs. Beyond the withdrawal of the guidance, the treatment of OPMs as regulated third-party servicers is an absolute necessity for improving program integrity and protecting students.

Sincerely,

A handwritten signature in black ink, appearing to read "Barmak Nassirian". The signature is fluid and cursive, with a large initial "B" and "N".

Barmak Nassirian
Vice President for Higher Education Policy