

February 23, 2023

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 202020

Re: Docket ID ED-2022-OPE-0103

Dear Secretary Cardona:

On behalf of the higher education associations listed below, representing two- and four-year public and private colleges and universities, I write regarding the Department of Education (ED)'s February 15 Dear Colleague Letter, "Requirements and Responsibilities for Third-Party Servicers (TPS) and Institutions" (DCL ID: GEN-23-03). Given our desire to provide meaningful comments on the important and complex issues raised in the DCL, and the significant institutional compliance efforts that it will entail, we strongly urge the Department to extend both the period for institutions to submit comments and the May 1 institutional reporting deadline contained in the guidance by a minimum of 30 days.<sup>1</sup>

We appreciate and understand the Department's desire to gain a better understanding of institutional relationships with outside entities and to ensure proper oversight of taxpayer investments in Title IV financial aid programs. However, as the Department itself indicates, it "has not previously notified the community" of all the functions and activities it has outlined in the DCL and would subject an entity to TPS requirements. To meaningfully comment on the guidance and its implications, colleges and universities will need time to conduct an in-depth and individualized review of each and every contract or relationship with an outside entity—which, at some institutions, could number in the hundreds—to determine whether the entity meets the DCL's expanded definition of a TPS and what operational or other impact that determination has from a policy perspective.

As the Department notes, determining whether an entity is subject to the TPS requirements requires a deep dive into the specific contractual terms, because it is "possible for an entity to be considered a TPS in relation to one institution and not for another, depending on the specific services or functions that the entity performs for each institution." While we continue to study the Department's guidance, based on our initial read, the broadened definition of a TPS appears to cover entities that are beyond the common understanding of that term. Our hope, if given appropriate time to comment, is to provide the Department with a fuller picture of the variety of important institutional arrangements that exist so it may better understand the guidance's impact. Based on our review of the DCL, it appears that the following entities may be considered TPSs: an institution that provides courses and instruction to another institution as part of an inter-college consortia; an online extension campus providing services to another campus of the same university; an institution in a state system providing services to other institutions in the system; a hospital providing clinical experiences and the related educational programming for nurses and other medical professionals; a local police department helping to compile and analyze campus crime statistics; a non-profit organization providing student engagement and

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<sup>1</sup> This letter does not attempt to detail our substantive input on the Department's proposal, which we are in the process of developing and will provide to the Department in a separate submission.

retention services or tools to improve student outcomes for at-risk students; publishers providing online materials and study guides, or technology providers developing adaptive courseware solutions.

In addition, institutions may have contracted with companies that have foreign ownership, meaning they would be unable to meet TPS requirements. We believe the Department would benefit from a deeper understanding of the potential that the guidance could trigger an unintended disruption of services to students currently provided by institutions through these entities.

In addition to wanting to provide insightful comments, institutions will also need time to analyze their TPS contracts and arrangements to ensure that all TPS requirements are met, and they may need to modify existing contracts to comply with TPS requirements or find and contract with alternative providers. May 1 does not provide enough time to review contracts, provide comments, and become compliant.

We support the Department in its efforts to ensure appropriate oversight of Title IV programs and protections for students and taxpayer dollars. We respectfully request the Department to provide more time to allow colleges and universities to better understand the guidance, to surface any unintended consequences that the Department may wish to address, and then to comply.

We appreciate the opportunity to comment and engage with the Department on this important topic and sincerely hope there will be additional time to do so.

Sincerely,



Ted Mitchell, President

On behalf of:

ACPA-College Student Educators International  
ACT  
American Association of Colleges and Universities  
American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Association of Veterinary Medical Colleges  
American Council on Education  
American Dental Education Association  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Independent Colleges and Universities in Pennsylvania  
Association of Governing Boards of Universities and Colleges  
Association of Independent California Colleges and Universities (AICCU)  
Association of Independent Colleges & Universities in Massachusetts  
Association of Independent Colleges & Universities of Rhode Island  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
Career Education Colleges and Universities  
CCCU - Council for Christian Colleges & Universities  
Coalition of Urban and Metropolitan Universities (CUMU)

College and University Professional Association for Human Resources  
Common App  
Consortium of Universities of the Washington Metropolitan Area  
Council for Opportunity in Education (COE)  
Council of Graduate Schools  
EDUCAUSE  
Great Lakes Colleges Association  
Higher Education Consultants Association  
Higher Education Loan Coalition  
Hispanic Association of Colleges and Universities  
Michigan Independent Colleges & Universities  
Middle States Commission on Higher Education  
NASPA - Student Affairs Professionals in Higher Education  
National Association of College and University Business Officers  
National Association of College Stores  
National Association of Colleges and Employers (NACE)  
National Association of Independent Colleges and Universities  
National Association of Student Financial Aid Administrators  
New England Commission of Higher Education  
Northwest Commission on Colleges and Universities  
SACSCOC  
State Higher Education Executive Officers Association  
Tennessee Independent Colleges and Universities Association  
UPCEA  
WASC Senior College and University Commission (WSCUC)  
Wisconsin Association of Independent Colleges and Universities