WICHE Cooperative for Educational Technologies

STATE AUTHORIZATION NETWORK
a division of WCET

Commenting on Department of Education's OPM Questions
Background and Advice. Time is Short. Deadline is March 16.

In mid-February 2023, the U.S Department of Education announced that it is seeking comments about Online Program Management (OPM) providers and, specifically, the ways in which they are reimbursed for their services. This WCET and State Authorization Network document provides a brief background, a review of the questions being asked, and provides advice on participating in the commenting process.

Regarding the term "OPM", there are several models for the provision of online support services that use different names. Some use the "revenue sharing" method of reimbursement while others use a "fee for service" model that does not have payments dependent upon the number of students recruited. For simplicity's sake, the term "OPM" is used as an all-encompassing moniker.

> If you are using or recently used an OPM of any kind, it would be wise to comment. **Deadline is March 16**.
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> In our communications with members, we have found the negative voices have been the loudest. You are encouraged to comment whether your experience has been good or bad.

Background

The U.S. Department of Education has heard concerns about Online Program Management (OPM) providers in the past few years. Senate, House, Government Accounting Office, and consumer groups all have called for changes in or stronger regulation of OPMs.

A main concern is around "incentive compensation" in which an OPM receives a percentage of the tuition or otherwise benefits based upon the number of students successfully recruited. There is a worry that the emphasis is monetary and not on student well-being. Some additional concerns include the large share of the tuition revenue that go to the providers and not institutions, aggressive recruiting of students, the price students pay is increased, and institutional lack of control over the program offered. There are similar companies that use a "fee for service" model in which a flat price is paid regardless of the number of students recruited.

> Who should comment:
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> -Institutional personnel using an OPM.
> -Institutional personnel with previous experience using an OPM.
> -Student at institutions using OPM.
> -Anyone else wishing concerned about what regulations may or may not do in the future.

Typically, "incentive compensation" is not allowed for Title IV financial aid purposes. In 2011, the U.S. Department of Education issued a "Dear Colleague letter" providing an exception for "bundled services." OPMs have used that exemption in ways not fully anticipated in the 2011 guidance.

Earlier this year, the Department issued its regulatory calendar for the year. One of the topics targeted for negotiated rulemaking (a process to create or refine regulations) in 2023 is "third party services and related issues," such as OPMs. That process will likely not start until late summer or fall. The February

Note: The information and analysis in this document are our best understanding and should not be considered to be or used as legal advice. Legal questions should be directed to legal counsel.

announcement from the Department asks several questions about institutional experiences with OPMs and what types of regulations would help or harm them.

The Nine OPM Questions Asked by the Department

The Department is seeking input specifically on the following nine questions. Below are the questions plus some context and/or suggestions on commenting. Commenting on all these questions could result in a lengthy dissertation. Suggest that you carefully weigh where your commenting on your experiences will have the most insights and impact. A completely considered response on some questions might be better than lightly covering all of them.

1. What are the benefits and disadvantages of the current incentive compensation exception for bundled services for institutions and students?

It may be good to note that not all OPMs use incentive compensation. That fact sometimes gets lost in the discussion and the resulting rules might be broader than intended. For those that do use incentive compensation, some benefits are:

- The model allows the OPM to invest in building programs that can be paid back later through the revenue sharing. The institution might not have the cash to start or expand a program.
- Everyone is incentivized to grow or maintain enrollments.

Disadvantages:

- The focus could be on compensation and not the student.
- The OPM might entice students who are not a good fit for the program.
- Academic decisions might be made that are more focused on recruiting than academics.

2. How can the Department better identify, define, and address the activities that may raise concerns under the current incentive compensation guidance?

- Compare student retention and completion rates with programs not using incentive compensation.
- Conduct student-centered research on those enrolled or previously enrolled in those programs.

3. How much of an institution's spending on a bundle of services provided by a third-party entity is typically allocated to recruitment and related expenses? This will help the Department understand the proportion of the spending in the bundle that goes to recruitment versus a range of services.

While this seems like an innocent question, it is likely based in proposals by several organizations that there should be set percentage limits as to how much an institution can spend on categories such as teaching/instruction, marketing, student support, and others. Institutions have such a wide variety of models that it is difficult to imagine the Department creating a scale that would be flexible enough to serve everyone. The result may be that it actually hampers institutions that have been innovative, controlled costs, and have good outcomes. If you agree, it might be good to comment on the idea of controlling the marketing budget through Title IV regulations.

4. How has contracting with a third-party providing services under the bundled services exception impacted enrollment, tuition and fees, the types of programs offered, the modality through which programs are provided, student outcomes, revenues, and expenditures at institutions? How do these results compare to programs not supported by an OPM or students attending in-person at a program that is also supported by an OPM?

This could be a long story for each institution, but this would be good data to have. Be sure to note where comparisons are fair comparisons and where this might result in comparing apples and oranges. For example, an engineering program might have a different underlying cost, tuition, and fee structure than a program in philosophy, regardless of whether an OPM is used.

5. How would changing third-party servicer contracts from a revenue-sharing model to a fee-for-service model impact the services, such as recruitment, currently provided to an institution under the bundled services exception?

Impacts to consider:

- Changes in satisfaction levels of students if recruiting is less aggressive.
- Time and steps needed to make the conversion in contracts and in processes.
- Impact on any agreements that involved up-front money to start or expand a program.
- Changes that you may make in what services you will continue to outsource.
- Ability to support the program if enrollment projections are not met.
- Anything unique to your institution and/or program.

6. How do tuition and fees of programs supported by third-party services differ when provided under a revenue sharing model as compared to a fee-for-service model?

Unless an institution has had both, it may be really difficult for anyone to answer this question with any sense of confidence. A big worry is that they labor under the common misconception that all online programs COST less to develop and offer and therefore the STUDENT PRICE (tuition and fees) should be lower. The argument made by critics is that OPMs (especially revenue sharing models) add costs and then students pay more. In WCET's research on this topic (scroll down to Cost and Price of Digital Learning), both cost and price can be lower, but that is unusual and happens only if that is an explicit goal from the start of planning the program.

7. To what extent does the bundled services exception impact institutions' ability to create or expand online education offerings? To what extent would fee-for-service models impact institutions' ability to create or expand online education offerings?

It's probably difficult or impossible for an institution to answer, as worded. To the first part, you can only talk about your experiences.

To the second question, again provide your insights on the hypothetical. For those in which the OPM invested in creating or expanding a program, would they have done so under a fee for service model? They might have. Also, in a fee-for-service model, is it easier to retire a service that you no longer need?

8. How might the Department more clearly define what it means to be an unaffiliated third-party for purposes of the incentive compensation guidance to ensure there is no affiliation between the institution and the entity providing services?

Affiliation is about ownership and control.

9. What steps can the Department take to better ensure compliance with the prohibition on incentive compensation?

The Third-Party Servicer guidance of February 2023 seems to cast a much wider net for services. Much of the services caught in that net have no incentive compensation component and many pose very little financial aid compliance risk. To ensure compliance with the prohibition on incentive compensation, the regulations and guidance need to focus on the risks associated with that activity and not diffuse Department and institutional focus across many other activities that pose fewer problems.

Not sure how to regulate this but the institution should be able to show control of the OPM relationship and of decision making. OPMs run at business speed and they were hired to do so. Colleges do not run at business speed. There needs to be strong institutional leadership to control that conflict. That will help to keep student protected from the infringements reported in using incentive compensation.

Commenting to the Department

The Department announced opportunities for anyone to give input during "listening sessions" or through written comment. According to the announcement, the purpose of the comment period is for:

"…seeking to better understand the impact of the bundled services exception in the context of growing online enrollment and associated Federal student loan debt. The Department is currently reviewing the incentive compensation guidance to determine what, if any, changes to the incentive compensation guidance might be appropriate, particularly regarding the exception for bundled services."

Who Can and Should Comment

Anyone can comment. Those who work at institutions that have or had an OPM or if you used to work at an institution with an OPM are particularly helpful. As with most times when change is sought, those with negative experiences are more likely to participate. Therefore, those with positive or middling points-of-view should especially consider this opportunity.

Students who have been harmed through the use of an OPM vendor should be encouraged to participate. Also, those with a vested interest through advocacy or interest in improving education.

Institutional personnel who do not have an OPM should review the questions and consider commenting on some of them. The resulting regulations or guidance could have a broader reach than expected, as is seen in the February guidance regarding Third-Party Servicers.

Note: An official comment should come from institutional or organization leadership. Anyone may comment and give their opinion, you just have to be careful to state that you are providing your personal response and not an official one on behalf of where you work.

How to Comment

Comment in a Virtual Listening Session – March 8-9, 2023; 1-4pm ET
Register by sending an email message to *margo.schroeder@ed.gov* no later than 12:00 p.m., Eastern time, on the business day prior to the listening session at which they want to speak.

Observe the Virtual Listening Sessions – March 8-9, 2023; 1-4pm ET
Registration for those who wish to observe: *www2.ed.gov/about/offices/list/ope/policy.html.*

Submit a written public comment addressing the questions posed by the Department regarding incentive compensation for OPMs. **Deadline: March 16, 2023**. Submit a formal comment. Docket Number: ED-2023-OPE-0030.

Questions

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This document and the Third-Party Servicers (TPS) one pager were created by WCET (the WICHE Cooperative for Educational Technologies) and SAN (the State Authorization Network) for the exclusive use of their members.