



**INSTITUTE FOR REGULATORY ANALYSIS
AND ENGAGEMENT**
EST. 2021

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Incentive Compensation Guidance Under Title IV of the Higher Education Act of 1965
Docket ID ED-2023-OPE-0030

To Whom It May Concern:

As Chairman and Founder of the Institute for Regulatory Analysis and Engagement (IRAE), I write today to share my organization's concerns with the Department of Education's consideration of changes to guidance and regulations regarding incentive compensation under Title IV of the Higher Education Act of 1965.

IRAE is a non-profit, non-partisan research, education, and advocacy organization. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that risks and costs of regulation are fully considered based on sound scientific and economic evidence and to ensure the voices, interests, and freedoms of Americans are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

Sound regulations are founded on facts and data. They are implemented in a way that encourages efficiency and transparency while also fostering growth and investment. They are agnostic of winners and losers. They are not punitive.

Across all these measures, revisions to the bundled services exception by the Department of Education would fall far short of what any objective observer could call a *sound regulation*.

While our organization opposes all instances of government overreach, the prospect of such overreach infringing on the ability of our nation's students to access education that aligns with their goals is particularly upsetting. Educational choice should be left in the hands of the students—their goals, their reasons for pursuing higher education, their reasons for selecting a

particular education establishment. Eliminating the bundled services exception would shortchange those goals and take that freedom away from students.

Beyond restricting student choice, changes to existing guidance threaten to undermine the student experience. Students have expressed a high degree of satisfaction with the experience provided by online education as such programs have become more common. 95% of students who responded to a survey conducted in 2021 said they would recommend online education to others. 70% said the experience provided by online learning was equal to or even better than that offered by in-person programs. And 60% of online learners said they would likely enroll again.

A recent Gallup poll found that nearly all alumni surveyed—97%—reported a positive career outcome after completing an online graduate degree. Benefits included finding a more fulfilling career path, making a positive career change, receiving a promotion or raise, and building relevant skills for the future.

Even given a preponderance of data demonstrating the effectiveness of OPMs, the Department of Education remains focused on indulging politically popular scapegoats rather than truly strengthening the higher education system in the United States. While this seems to be the current milieu in the intersection of politics and public policy generally, it hurts students in the long term.

Few would disagree with the notion that online education is benefitting students. There's no question that online education has made it dramatically easier for a huge population of American students to obtain a college degree. And even as costs have steadily risen across higher education, online education has made it possible for universities to expand the scope of their coursework without passing the costs of doing so on to students. Given the ongoing financial strain caused by student debt, the cost efficiencies that can be realized for both students and schools through online education should be underscored.

OPMs have played a key role in this expansion of educational access, making it possible for schools to reach more students and better tailor programs to suit their needs.

Despite the clear benefits that innovative educational offerings have created, the Department of Education is flirting with monumental changes that would endanger the progress that's been made through OPMs and put American higher education at a disadvantage to foreign competitors. **There is no data to justify this action.** Data from both public and private sources makes it clear that OPMs are not the rogue actors that their opponents make them out to be. OPMs and the revenue sharing model that has served as the backbone of their relationship with colleges and universities are common, effective, and crucial to the future of education in the U.S.

Good regulations aren't built on shaky empirical grounds—in fact, the essence of the Administrative Procedure Act is just the opposite. Regulatory proposals should not be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

In sum, the Department of Education should not be in the business of unilaterally limiting universities' ability to provide flexible education options. Rather than pressing harmful

regulatory overreach that weakens the overall system for students and schools alike, the Department of Education should do more to encourage innovation that cultivates enrollment, reduces costs, and empowers students to reach their goals.

Thank you. If you require more information, please do not hesitate to contact me via email, Andrew.Langer@InstituteForRegAnalysis.org.