



**INSTITUTE FOR REGULATORY ANALYSIS  
AND ENGAGEMENT**  
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**M E M O R A N D U M**

**To: Hon. Miguel Cardona, Secretary, US Department of Education**  
**From: Andrew Langer, Chairman, Institute for Regulatory Analysis and Engagement**  
**Date: March 28, 2023**  
**Re: Comments Regarding the DOE Request for Information on Proposed Changes to Requirements and Responsibilities for Third Party Servicers and Institutions under Title IV of the Higher Education Act of 1965, Docket ID ED-2022-OPE-0103-009**

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Secretary Cardona:

The following are additional comments of the Institute for Regulatory Analysis and Engagement (IRAE) on the United States Department of Education (DOE), Request for Information on Proposed Changes to Requirements and Responsibilities for Third Party Servicers and Institutions under Title IV of the Higher Education Act of 1965, Docket ID ED-2022-OPE-0103-009, originally published February 16, 2023 and updated on February 28, 2023, specifically DOE's inquiry into Online Program Managers (OPMs). These comments give greater detail to the issues I testified on at DOE's online "Listening Session" on Thursday, March 9, 2023.

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, and especially of small business, 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-important, that those proposals do not, in fact, make public policy problems worse.

We write today to share my organization's concerns with the Department of Education's aggressive expansion of the regulation of partnerships between universities and third-party servicers that administer any aspect of the former's participation in federal financial aid programs. The revised guidance will have massive and detrimental implications for online program managers (OPMs) and the universities that rely on these third-party servicers to keep their curricula as flexible, current, and affordable as possible.

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, the Department of Education’s proposed third-party servicer guidance 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 choice of a particular education establishment. Sidelining OPMs would shortchange those goals and take that freedom away from students.

Beyond restricting student choice, the guidance threatens 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 when misrepresentation of the impact of OPMs becomes engrained in the rulemaking process.

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.**

## **Conclusion**

Despite the clear benefits that innovative educational offerings have created, the Department of Education is fast-tracking 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 claim them to be. 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.

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.

We suggest that this proposal be withdrawn as it is currently proposed.

Thank you. If you require more information, please do not hesitate to contact me via email, [Andrew.Langer@InstituteForRegAnalysis.org](mailto:Andrew.Langer@InstituteForRegAnalysis.org).