NATIONAL COLLEGE ATTAINMENT NETWORK

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

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Thank you for the opportunity to comment on Third Party Servicer (TPS) guidance. The National College Attainment Network (NCAN) represents more than 600 college access and success organizations across the country, supporting millions of students annually. Our member organizations are largely non-profit organizations working directly with first generation students, students of color, and those from low-income families to help them go to and through college.

Our members work to address structural inequalities so that every student can have the opportunity to achieve social and economic mobility through higher education. They provide a range of services from one-on-one support in completing college and financial aid applications to helping students decide on their best postsecondary educational option to coaching and providing scholarships to help them overcome challenges once they have enrolled. Today, forty percent of students who enter college don't attain a degree within six years and progress on this measure has stalled in recent years. Too often students who stop or drop out of college are saddled with debt they cannot afford to repay because they don't receive the earnings boost a degree provides.

A growing body of evidence reveals that some approaches significantly increase postsecondary access, persistence, completion, and post-attainment earnings. Scaling these solutions, as the Biden Administration has proposed, is one of the most effective means to increase social and economic mobility. NCAN members have celebrated the Biden Administration's commitment to investing in evidence-based programs that address the college completion crisis. We also recognize the critical importance of growing additional models to reach more students from underserved communities.

We are deeply concerned, however, that the updated guidance would undermine this key national priority by expanding the definition of a TPS far beyond programs that help administer Title IV funds, as has previously been the case. While we support and share the Administration's goals of fully eliminating incentive compensation and other predatory practices, **the sweeping changes in the guidance will impose administrative burdens and costs on college access and completion programs that will threaten their ability to operate, not to mention scale.**

The updated guidance targets programs that enhance recruitment and retention, and specifically lists those that provide personalized counseling and outreach to help students remain enrolled in school – precisely the model with the strongest body of evidence showing its efficacy. Programs such as College

AIM in Atlanta, College Now Greater Cleveland in Ohio, College Possible in Austin, Texas, College Success Foundation in Washington state and Washington, D.C., and uAspire in Massachusetts, New York and California are among the hundreds of non-profit organizations that help students from underserved communities navigate the college admissions and financial aid application process, select a school, and overcome the barriers to attain a degree. Bottom Line, CUNY ASAP | ACE, and InsideTrack, all of which have randomized controlled evaluations demonstrating their effectiveness, all contract with institutions of higher education (IHEs) across the country to provide services and support to help students persist in school.

While the guidance says it is aimed at addressing abuses by online program managers, or OPMs, the description of services covered extends far beyond OPMs, including entities that provide *any* service related to retention, including instances where there has been no allegation of misconduct. As a result, even College Promise programs that provide mentors along with grant aid, programs that help college students meet their basic needs by accessing SNAP, child care, or housing assistance, and mental health providers, appear to be directly impacted by this guidance because they serve the purpose of helping students stay in school.

Once designated a TPS, the compliance responsibilities that ensue are onerous. Programs must undergo an annual independent program audit and incur joint liability with IHEs. The audit alone is likely to cost upwards of $40,000 each year for small organizations and consume at least a week of staff time. The audit guide requires a site visit, interviews with management, and a review of at least 25% of randomly selected student files. These requirements may be updated and expanded by the Office of the Inspector General at any time.

Many institutions and the nonprofits that work with them have tight budgets and lean staffs, and that is especially true for IHEs and nonprofits that serve a high percent of students from underrepresented, undersupported populations. Sixty five percent of NCAN members have annual revenue of less than $5 million. Every dollar and every hour that these organizations spend on compliance activities diverts limited resources from mission-aligned, student success activities. At some point, for example if the audit costs $40,000 and the contract is for $150,000, the value of a contract will not be sufficient to cover their costs.

The audit requirement will have a particularly harmful effect on programs serving students who are undocumented. NCAN member organizations in this category have expressed concern about the fear it will instill in students to have a federally-mandated auditor going through student files and the chilling effect it will have on nonprofits willingness to enter into these contracts if doing so will make it more difficult for them to serve the students they exist to help.

The guidance further requires TPS to be held jointly liable for any software deficiencies, data breaches, incorrect consulting advice, and lost or damaged records, a requirement that may deter IHEs from entering contracts with non-profit organizations. Forming new partnerships between IHEs and non-profit organizations focused on college completion will become more complicated as a result of the additional hoops required by this guidance, further delaying processes that are complicated and time-consuming today. Smaller nonprofits in particular will struggle with the new liability requirements, which will involve discussions of indemnification and the need for liability insurance.

As a practical matter, the guidance will be virtually impossible to consistently implement because whether an organization qualifies as a TPS depends on the language of each contract yet IHEs and organizations working with them will have to make these determinations. It is simply not practicable to impose a complex regulatory regime - that is subject to change without notice - on thousands of entities based on individual interpretations of contracts and MOUs that do not use standard formats or common terms. In sum, the guidance will divert services from students in need while generating a mountain of paperwork for IHEs and organizations that the Department of Education is ill-equipped to review, let alone use for meaningful oversight.

A better approach would be to restructure the guidance to limit the designation of TPS to for-profit OPMs that receive incentive compensation for recruiting and/or retaining students. This is a legitimate, even pressing, concern identified by the Government Accountability Office. Targeting the real problem the Department should be trying to solve will facilitate a deeper look at predatory programs that exploit students from low-income families, while allowing other programs to continue helping close the college access and completion gap.

We recommend that the Department take the following actions to narrow the scope of the guidance:

1. **Exempt from being designated as a TPS any organization that is a non-profit and not owned by a for-profit company.** Unlike for-profit companies, non-profit organizations work to advance a social mission, not garner profit. Though the indirect impact of the work of these non-profit entities may be to help IHEs maintain Title IV funding, their sole focus is to serve students by helping them attain a postsecondary degree. Federal guidance and regulation should reflect this.

2. **Exempt small organizations from being deemed a TPS.** The Securities and Exchange Commission exempts small businesses, defined as having less than $100 million in revenue, from external audits of their internal controls. The Family and Medical Leave Act, the Affordable Care Act, and other federal laws exempt organizations with fewer than 50 employees from numerous federal requirements. The Department of Education should adopt a similar approach and exempt small organizations from being designated a TPS in recognition of the high cost these requirements impose on them.

3. **Exempt organizations that receive less than 20% of their annual revenue or less than $10 million annually from IHEs**. Similar to the recommendation above, organizations with limited revenue from contracts, defined as an absolute amount or a proportion of their revenue, are seeking philanthropic investments and other forms of income to offset their costs and are not pursuing additional contracts to drive significant revenue.

4. **Clarify that a program advising students in their best interest, without a formal agreement with a school, is not considered a TPS.** Organizations that are advising students to attend a particular IHE in a manner that is in the best interest of a student (i.e., because the organization's analysis shows that the college provides generous financial aid and better student support once enrolled) without a formal contract or agreement with the IHE should not be considered a TPS. It seems impractical if not impossible to expect an IHE to know if an independent organization is taking such actions, and it would distort college advising if an organization had to have a formal agreement with an institution in order to recommend it to prospective students.

5. **Exempt from the TPS definition any entity that does not receive or provide compensation to an IHE.** Many college access and success programs have contracts or MOUs with IHEs that delineate the roles and responsibilities of both parties without providing compensation in either direction. These arrangements should not implicate the organizations as TPS. Absent any money exchanging hands, there is no conflict of interest between the interests of the student and the interest of the IHE/TPS.

6. **Exempt from TPS organizations with strong or moderate evidence demonstrating their impact on college readiness or completion.** Organizations and models that employ Tier I (Strong) or Tier II (Moderate) evidence on college readiness and completion at the postsecondary level in the What Works Clearinghouse should be exempt from the TPS roles and responsibilities. These organizations have undergone a deep and substantive assessment of their impact on key student outcome measures and been further vetted by the Institute of Education Sciences, a process that is more thorough than the roles and responsibilities described in the TPS guidance and more directly related to the Department's overarching goal of protecting students against predatory and exploitative behavior.

7. **Expand the list of services and functions that count as "Not a Third Party Servicer" in the Recruitment and Application-Related Activities to personalized financial aid counseling.** Individualized and interactive financial aid counseling should not be deemed TPS activities unless an organization is processing Title IV student financial aid applications and/or is compensated on a per-applicant basis. The FAFSA is a complicated form that frequently stumps even the most sophisticated applicant. Yet it is also the gateway to college for students from low-income families. Personalized counseling bridges that divide, helping students unlock federal financial aid and make data-driven decisions about their best postsecondary options. While we appreciate that the Department maintained an exclusion for activities that involve "FAFSA night" activities, it's difficult to understand how the exclusion of "FAFSA nights" interacts with recruitment and individual financial aid counseling. At FAFSA nights, prospective students often have financial aid questions and are often seeking enrollment at and have questions regarding specific institutions. It is impossible to see how the addition of these activities do not dramatically expand the number of nonprofits providing college access related services that would be subject to TPS

requirements. The Department of Education has and should continue to encourage this critical work and exclude organizations that do this work from being deemed TPS.

8. **Exempt from TPS organizations that fall only into the "Retention of Students'' category.** Organizations that are strictly focused on helping students persist in college, and therefore do not qualify as a TPS under any other category of services or functions, should not be deemed TPS. Interventions aimed at helping more students attain a degree address an important societal problem. The Department should not stifle innovation in this area.

We share the Administration's goal of protecting students from predatory practices, including the statutorily-banned practice of incentive compensation, and would like to work with you to ensure that programs purporting to help students access and complete college provide only high-quality services. This guidance, however, is a significant overreach that will constrain some of the most promising and proven initiatives aimed at increasing college attainment. The Department should not use a broad brush approach to lump all entities that work on college access and success into one bucket. We urge you to narrow the guidance to address the well-documented problems with OPMs while continuing to support new investments to expand evidence-based college completion programs.