

November 13, 2024

The Honorable James Kvaal
Under Secretary
United States Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Under Secretary Kvaal,

We write as a coalition of organizations representing students, consumers, veterans, and researchers to urge you to take immediate action to protect students and taxpayers from predatory for-profit online program managers (OPMs) by rescinding the [2011 Bundled Services Guidance](#). We are alarmed at the Department of Education's failure to rescind the Guidance, which is inconsistent with the statutory ban on incentive compensation.

The 2011 Bundled Services Guidance permits OPMs to receive incentive compensation for recruitment, which is the precise conduct that the Higher Education Act prohibits.¹ The Guidance permits tuition-sharing agreements that provide a financial incentive for OPMs to engage in [predatory recruitment tactics](#). As a result, OPMs have reportedly [engaged in deceptive and abusive recruiting](#); recruited students who [do not meet enrollment requirements](#); failed to deliver on [commitments](#) to institutions to arrange clinical placements; and promoted [high-cost, low-value programs](#). The bundled services loophole also contributes to OPMs' [predatory targeting](#) of students of color, students from low-income backgrounds, and veterans for recruitment into low-quality and/or low-value, high-cost online programs.

OPMs' conduct violates both the intent and the letter of the law prohibiting incentive compensation. Moreover, the practices in the industry have gone beyond even the limits of the policy set out in the Guidance. The Department's inaction demonstrates a failure to recognize this reality.

The recent bankruptcy of 2U, Inc. – an OPM with seventy institutional partners – demonstrates the need for immediate action. 2U filed for bankruptcy in July, raising concerns that its collapse could disrupt the education of tens of thousands of students. Prior to declaring bankruptcy, 2U had been [sued by Student Defense for deceptive practices](#); in a [separate lawsuit](#), one of 2U's partner institutions, USC, is accused of misleading students about the quality of a 2U program. In the bankruptcy itself, [Fordham University has alleged that 2U](#) consistently failed to fulfill its contractual obligations to place students in internships that are crucial to completing its online degree program. Yet after its bankruptcy filing, 2U announced that the company is restructuring to allow the company to grow and expand its partnerships with institutions.

2U is not the only OPM to face allegations of misconduct. A recent *New York Times* [article](#) highlights a lawsuit against CalTech alleging consumer protection law violations arising from

¹ See Higher Education Act, 20 U.S.C. § 1094, subd. (a)(20) (banning universities that receive federal funding from providing compensation to corporate partners that is based on the partner's success in securing enrollments).

CalTech's contract with an OPM, Simplilearn, to operate online coding bootcamps. The [lawsuit alleges](#) that Simplilearn deceived students by using the CalTech name to sell a program that was not in fact operated by CalTech nor taught by CalTech instructors. The *New York Times* article also describes the company as having used "high pressure sales tactics" to recruit students into the program.

For three and a half years, the Department has failed to take the necessary steps to rein in OPMs' predatory practices and to fix its own error in issuing the Guidance. As the Biden Administration considers its legacy in protecting students and families from predatory practices, it is time for the Department to take action to rescind the Guidance. This action will fulfill the Department's duty to protect students and taxpayers from abuse.

We thank you for your consideration and remain available should you desire additional information.

Sincerely,

AFT, AFL-CIO

Center for American Progress

David Halperin, Attorney

National Consumer Law Center (on behalf of its low-income clients)

New America Higher Education Program

Project on Predatory Student Lending

Student Borrower Protection Center

The Century Foundation's Higher Education Policy Team

The Institute for College Access & Success

Veterans Education Success