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DEPARTMENT OF EDUCATION

[Docket ID ED-2023-OPE-0030]

Announcement of Listening Sessions

AGENCY: Office of Postsecondary Education, U.S.

Department of Education.

ACTION: Announcement of Listening Sessions.

SUMMARY: The U.S. Department of Education's

(Department's) Office of Postsecondary Education (OPE) announces virtual listening sessions to receive public comments, recommendations, and suggestions to improve guidance on the incentive compensation prohibition under title IV of the Higher Education Act of 1965, as amended (HEA), particularly with respect to bundled services. This notice sets forth the dates and times, agenda, and instructions for attending and providing live comments at the virtual listening sessions, as well as instructions for submitting written comments.

DATES: The virtual listening sessions will be held on:

March 8, 2023, from 1 p.m. to 4 p.m., Eastern time

March 9, 2023, from 1 p.m. to 4 p.m., Eastern time

The Department will accept written comments via the Federal eRulemaking portal until March 16, 2023. See the ADDRESSES section of this document for submission

information.

ADDRESSES: The listening sessions will be held virtually. See the SUPPLEMENTARY INFORMATION section for information on how to register to attend or to provide live comments during a session. Written comments must be submitted via the Federal eRulemaking Portal at regulations.gov. If you require an accommodation or cannot otherwise submit your comments via regulations.gov, however, please contact the person listed under FOR FURTHER INFORMATION CONTACT. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Please go to www.regulations.gov to submit your comments electronically. Information on using regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing on the Federal eRulemaking Portal at

www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ashley Clark, U.S. Department of Education. Telephone: (202) 453-7977. Email: ashley.clark@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background: Since 1992, section 487(a)(20) of the HEA has prohibited institutions of higher education (institutions) from providing any commission, bonus, or other incentive payment to individuals or entities based, directly or indirectly, on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, subject to certain exceptions. In 2011, the Department issued DCL GEN-11-05 to provide guidance on the Department's interpretation of newly issued regulations (75 FR 66831) relating to the prohibition on incentive compensation and other title IV program integrity issues in § 668.14(b).

As noted in that guidance, the prohibition on incentive compensation applies to both individuals and entities. The Department's guidance also sets forth examples of activities that the Department believes would violate the prohibition and examples of allowed activities. Under that guidance, direct payments to recruiters based on tuition generation are considered prohibited incentive compensation. However, in the case of a third-party entity that is not affiliated with the institution it serves and is not affiliated with any other institution that provides educational services, the guidance specifies that providing a set of services that includes recruitment (known as bundled services) does not violate the prohibition on incentive compensation as long as the entity does not make prohibited compensation payments to its employees, and the institution does not pay the entity separately for student recruitment services.

Since issuing that guidance, the number of students who were recruited to institutions by entities operating under this bundled services exception has increased significantly, particularly through online programs operated by third-party entities, including Online Program Managers (OPMs). These online programs are not subject to the same enrollment constraints, such as physical classroom

space or the amount of potential students in the surrounding area, as in-person programs. As a result, the Department is 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. To assist in that effort and ensure the Department is hearing from a wide range of stakeholders, we are convening virtual listening sessions and accepting written public comment on this topic. Specifically, the Department invites comment from institutions, faculty, OPMS and other third-party contractors, scholars, advocates, and students on the following specific questions:

1. What are the benefits and disadvantages of the current incentive compensation exception for bundled services for institutions and students?
2. How can the Department better identify, define, and address the activities that may raise concerns under the current incentive compensation guidance?
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.

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?

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?

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?

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?

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?

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

Registration: Individuals who would like to present comments at the virtual listening sessions must 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. The message should include the name of the speaker, the email address of the speaker, and one or more dates and times during which the individual would be available to speak. We will attempt to accommodate each speaker's preference for date and time; however, if we are unable to do so, we will make the determination on a first-come, first-served basis, based on the time and date we received the message. We will limit each participant's comments to 3 minutes.

The Department will notify speakers of their reserved time slot and provide information on how to log in to the

session as a speaker. An individual may make only one presentation at the listening sessions. If we receive more registrations than we can accommodate, the Department reserves the right to reject the registration of an entity or individual affiliated with an entity already scheduled to present comments, to ensure that a broad range of entities and individuals are able to present. Speakers will access the meetings through a link separate from those who wish to listen to the sessions.

Individuals who want to observe the listening sessions, but who do not want to present comments, also are required to register. We will post registration links for attendees who wish to observe on our website at: www2.ed.gov/about/offices/list/ope/policy.html. There will be a unique link each day for attendees who wish to observe. Non-speaking attendees will be muted for the duration of each listening session.

Reasonable Accommodations: The sessions will be accessible to individuals with disabilities. If you will need an auxiliary aid or service to attend or to provide a live comment, please notify the person listed under FOR FURTHER INFORMATION CONTACT at least 1 week before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to

make available the requested auxiliary aid or service because of insufficient time to arrange it. Further information about requesting auxiliary aids and services will be available during the session registration process. To provide written comments, see the ADDRESSES section above.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Postsecondary Education.*