OFFICE OF THE PRESIDENT
1111 Franklin Street
Oakland, California 94607-5200

March 30, 2023

Ms. Annemarie Weisman
Deputy Assistant Secretary for Policy, Planning and Innovation
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

RE: Requirements and Responsibilities for Third-Party Servicers and Institutions,

Docket ID: ED-2022-OPE-0103

Dear Ms. Weisman,

Thank you for the opportunity to respond to the February 15, 2023, "Dear Colleague Letter" (DCL) titled "Requirements and Responsibilities for Third-Party Servicers and Institutions" (DCL ID: GEN-23-03) as updated on February 16, 2023, and then again on February 28, 2023. The University of California (UC) appreciates the U.S. Department of Education's efforts to understand and provide oversight of institutional relationships with external entities. However, like many other universities, we are extremely concerned about the expanded scope of the Third-Party Servicers (TPS) definition, the timing of the new requirements and the significant institutional compliance required in a short amount of time. Outlined in our letter is a general overview of the concerns and some examples of impact that we have been able to identify so far. UC urges the department to undertake a negotiated rulemaking process to solicit the input of a diversity of stakeholders with expertise and knowledge on the application and impact of such agreements.

Impact of Definition

The department's new guidance on TPS notably adds the following to the list of functions that constitute TPS functions: student recruiting services, student retention services, involvement in the development of instructional course content and in some cases, the dissemination of marketing materials. Additionally, this new definition includes companies that have access to the systems used to administer Title IV programs, such as financial aid management, recruitment and enrollment, admissions, and learning management platforms. It includes vendors that monitor academic engagement or respond to student inquiries for the purpose of retention. It also includes entities that provide services for "any percentage" of a Title IV-eligible program, including delivering instruction and assessing student learning. These new inclusions to the TPS definition will greatly expand the number of third-party providers covered by the department's TPS rules.

The impacts of this new definition of TPS will touch on almost every area of university operations, including but not limited to, information technology (IT), academic programs, disbursement of financial aid, education abroad programs, and continuing and professional education programs through campus extension programs. This new definition will have broad impacts on a large complex university system with a global reach footprint supported by an extensive technology portfolio.

Impact of Rushed Guidance and Implementation

The provided definition of a third party is so broad that it is difficult to anticipate how the language is to be interpreted and applied. To provide a more detailed comment on the DCL's guidance and its widespread implications, each campus of the University of California will need to conduct an in-depth and tailored review of each and every contract or relationship with an outside entity to ascertain whether the entity meets the DCL's expanded definition of a TPS and identify what impact that determination will have on campus operations. Just reviewing UC suppliers and sub-suppliers using the new criteria outlined in the DCL, would be an extensive and time-consuming process.

UC would need time to conduct reviews of foreign ownership and foreign locations, and then make changes outlined in the DCL. If the determination required changing the supplier, this would be a long process, requiring a request for proposal (RFP), review, assessment, award, business process changes and then transition period. This would also require evaluating new suppliers and conducting security reviews (as required by Federal Student Aid). UC has a multitude of suppliers and sub-suppliers in the IT area that would fall under the expanded scope, and determining and monitoring the ownership of this supply chain may not be feasible without government mandated disclosure requirements from the supply chain. The scope of work and complexity of this project, even to perform the reviews and analyses, would be very disruptive to operations and could take more than a year.

Impact on Student Financial Aid

The proposed rules subject third party service providers to Title IV audit requirements and campuses to joint and several liabilities. This will increase costs and shrink the market of providers, placing additional resource strain on campus units involved in the administration and disbursement of financial aid.

Prior to the pandemic, several of our campuses turned to online platforms to assist with the verification of Free Application for Federal Student Aid (FAFSA) data, a move that saved considerable staff hours and allowed for a seamless student experience with this process during the pandemic. Campuses do not have the local technological resources to build or manage these online verification apparatuses. Holding these servicers jointly liable for errors or non-compliance on the part of the institution, and vice versa, will generate a need for risk assessment for both parties and consequently, revisiting, reevaluating, and/or canceling provider contracts. This jeopardizes campuses' administrative capabilities and risks unintentional noncompliance if the regulations are not further defined and clarified.

Impact on University of California Education Abroad Programs

The Department of Education's new guidance will have significant and adverse impacts on education abroad programs. The DCL expressly states that companies that are considered a TPS, as well as their subcontractors, cannot be (1) located outside of the United States or (2) owned or operated by an individual who is not a U.S. citizen or national or a lawful U.S. permanent resident. This is not a new statement, but it has new impacts. In the past, the definition of TPS was largely limited to active processing of Title IV funds, and it aligned with certain other government-wide limitations on the processing of taxpayer funds and information by overseas entities. However, the department's significant expansion into activities that are unrelated to handling funds raises concerns about the rationale for such a restriction and how it will work in practice.

This expanded definition will significantly impact the thousands of students who take advantage of the University of California's Education Abroad Programs (UCEAP) opportunities each year. Institutional capacity to ensure compliance with entities newly identified as TSPs involved in study abroad programming would likely result in the closure of many study abroad programs or restrictions on access for Title IV receiving students, thereby creating equity gaps for students and undoing decades of work in creating study abroad opportunities that are accessible to all students.

The prohibition on contracting with foreign or foreign-owned TSPs would have an immediate and significant impact on study abroad in the following ways:

- Would likely reduce programs to simply facilitating an academic exchange without in-country program support or oversight, leading to preferential treatment of universities in the financially privileged global North with adequate study abroad student support structures, and reducing UC student engagement in the global South;

- Would compromise the health, safety and security services that universities engage to support students abroad, such as travel insurance assistance providers, security vendor services and medical assistance providers;

- Would severely limit options for academically grounded experiential learning activities, e.g., field research or site visits that supplement classroom learning;

- Would likely prevent students from participating in any ancillary and valuable cultural activities while studying abroad.

Potential Impact on Continuing and Professional Education Programs

Each of UC's ten campuses has various Continuing and Professional Education Programs through UC Extension. Most programs are certificate programs and the impact on programs that are not Title IV eligible is unclear. It is unclear from the DCL whether the new guidance will be applied at the institutional level or the program level. The latter interpretation would exclude Boot Camps, Massive Open Online Course (MOOCs) (e.g., Coursera, EdX), certificates and other non-degree offerings. However, EdX has indicated that Boot Camps are within the scope of this guidance, although it is unclear if this would be within scope only when embedded in a degree program.

Additionally, it also appears that internal revenue sharing agreements could be impacted, such as the UC Extension unit providing internal Online Program Management (OPM) support to a school or college. At one of UC's campuses, its Extension division has been named the internal hub for future online graduate education programs precisely to ensure that revenue remains within the UC campus/system. However, the model does use revenue sharing for both degree and non-degree partnerships. UC would recommend that any internal agreements should be fully exempt from these rules.

There may be a misconception that some OPMs recruit and admit students into online programs. UC faculty (and the university) control the tuition pricing, curriculum, admissions standards, admission decisions, graduation requirements, faculty hiring decisions, student instruction, the size of the program and decisions regarding financial aid. OPMs used by UC Extension programs are required to get approval of all marketing assets and collaterals used in marketing a program. Given that these controls are in place, the idea that an OPM may adopt deceptive advertising practices to recruit students can easily be dismissed. The structure of the arrangement discourages hard-sell tactics. Because of the expertise of the OPM and the assets they bring to the program, UC Extension is able to provide round-the-clock logistics support to our students, especially for those who may not be as familiar with an online format. If a school and its OPM have engaged in deceptive recruiting practices, the issue would more accurately be with the institution rather than the OPM because the school has chosen to surrender control of the program to their OPM. There are vital functions that need to stay with the institution rather than be contracted out to an OPM.

The University of California appreciates the opportunity to comment on this proposal. UC strongly urges the department to take the time required to understand the potential unintended disruption of campus operations and student services provided by institutions through contracts with entities now subject to TPS requirements. UC believes that the expansion of the definition of Third-Party Servicers would be better addressed through negotiated rulemaking. If you have any questions regarding these comments, please contact Chris Harrington, associate vice president for federal governmental relations, at Chris.Harrington@ucdc.edu or 202-997-3150.

Sincerely,

Chris Harrington
Associate Vice President
Federal Governmental Relations
University of California System

cc:

Senior Vice President Brent Colburn, External Relations and Communications