

March 30, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Re: Dear Colleague Letter GEN-23-03, Requirements and Responsibilities for Third-Party Servicers and Institutions (Updated Feb. 28, 2023), comments submitted by NAFSA: Association of International Educators

Docket ID: ED-2022-OPE-0103

Dear Secretary Cardona,

On behalf of NAFSA: Association of International Educators and the undersigned organizations, thank you for the opportunity to comment on the Department of Education’s (Department) February 15, 2023, Dear Colleague Letter GEN-23-03, Requirements and Responsibilities for Third-Party Servicers and Institutions (Updated February 28, 2023) (DCL).

Legitimate goal without a legitimate process or policy.

We support the legitimate goal of the Department to “protect the interests of institutions, taxpayers, and students.” We are concerned the DCL fails to meet this goal because it imposes new requirements through subregulatory guidance—without input from relevant stakeholders through an appropriate procedure—and because it exceeds current law and regulations. Furthermore, as written, the rules of the DCL frustrate a goal of Title IV programs: to provide greater educational opportunities to a broader swath of American students. The broad language of the DCL has created great uncertainty within the U.S. higher education community as it works to build back from the devastating losses to international education during the COVID-19 crisis.

We urge the Department to withdraw the DCL or indefinitely suspend its effective date. If the Department seeks to regulate parties beyond the current financially-focused definition of third-party servicers of Title IV funds, it should follow the Administrative Procedure Act (APA) process to pursue separate tailored rulemaking—such as through the negotiated rulemaking process related to third-party servicers recently [announced](#) by the Department.

If the DCL is not withdrawn, we urge the Department to extend the implementation deadline and exempt certain entities “operating outside the United States or owned or operated by individuals who are not U.S. citizens, nationals, or permanent residents,” allowing them to contract with an eligible institution. We ask that the Department exempt third-party entities that engage in international student recruitment; study abroad content and programming developers and providers; educational content providers, developers and administrators; contractors that support

the realization of these functions and programs; and other partnerships that foster international education.

The Department’s attempt to substantively change the definition of third-party servicer exceeds the scope of the Higher Education Act and Department regulations.

The Department attempts to change this definition of “third-party servicer” in the DCL by bootstrapping new concepts into the preexisting definition.

Prior to the pronouncements in the most recent DCL, the definition of “third-party servicer” (TPS) was reasonably understood by the public and government alike to encompass only “entities that perform specific financial aid administration services for colleges.” (See, for example, U.S. Government Accountability Office, [GAO-22-104463](#), *Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges’ Arrangements with Online Program Managers* f.n. 5 (April, 2022)); 20 USC 1088(c) (defining third-party servicers as those entities “administer[ing], through either manual or automated processing” any aspect of student assistance programs); 34 CFR 668.2 (same, listing specific functions included in the definition that do not include facilitating international education alone).

The Department states in the DCL that the definition of TPS (34 CFR 668.2) should now be understood to also include third party entities “performing the functions of student recruiting and retention, the provision of software products and services involving Title IV administration activities, and the provision of educational content and instruction.” This expansion of the preexisting definition will create great disruption in the field of international education.

We assert that the Department’s new expanded interpretation of the definition exceeds the statutory and regulatory scope of the definition and violates sound regulatory drafting principles. If the Department seeks to regulate parties beyond financial third-party servicers of Title IV funds, it should follow the APA process to pursue separate, tailored rulemaking specific to the definition with public notice and comment.

The Department recognized the regulated community’s preexisting understanding of the scope of the “third-party servicer” definition by acknowledging in the DCL that it “has not previously notified the community that the performance of these functions subjects an entity to TPS requirements.” “These functions” are the newly covered third-party entities “performing the functions of student recruiting and retention, the provision of software products and services involving Title IV administration activities, and the provision of educational content and instruction.” The Department proceeds to characterize this expansion of scope as simply “guidance to clarify.” However, instead of reducing confusion or advancing comprehension, the actions of the Department have fueled confusion and created consternation.

The extraordinary expansion the Department is proposing to implement the DCL, by its plain language, classifies as third-party servicers many individuals and entities who are essential to the success of international education activities, but who are unrelated to the institution’s administration of Title IV *funding*. The Department’s expanded interpretation of the TPS definition to activities sharing no similarity to the financial functions referenced in its regulations is an impermissible expansion of regulatory authority.

Instead, the TPS definition language at 34 CFR 668.2 should be understood to establish parameters in line with statutory wording and standard legal principals, which is to say, the types of services covered but not included in its specific list should be of the same type as those included in the specified list. If interpreted in this way, the Department's action results in a de facto extension of the definition of TPS to virtually *all* third parties. The broader definition of TPS in the DCL would newly include the separate activities of "recruitment and retention" or "provision of educational content and instruction" or other contracts relating to the myriad services a university contracts for that are unrelated to administration of Title IV funds.

In the first paragraph of the DCL, the Department cites "[20 U.S.C. 1088\(c\)](#)" as the basis for a broad assertion that the Higher Education Act (HEA) "makes clear that agreements to administer 'any aspect' of an institution's participation in the Title IV programs fall within the scope of the Department's TPS oversight authority." That statutory provision, however, simply does not provide a source of carte blanche authority over "any aspect of an institution's participation in the Title IV programs." Rather, the plain language of the statute narrowly focuses the definition of third-party servicer to entities that contract with eligible institutions of higher education "to administer, through either manual or automated processing, any aspect of such institution's student assistance programs under this subchapter."

The plain wording of the substantive, non-definition provisions of the HEA also show that Congress was principally concerned with financial responsibility standards regarding third parties that handled any aspect of Title IV funding. For example, [20 USC 1082\(a\)](#) vests the Secretary of Education (Secretary) with the power to "prescribe such regulations as may be necessary to carry out the purposes of this part, including regulations applicable to third party servicers (including regulations concerning financial responsibility standards for, and the assessment of liabilities for program violations against, such servicers) to establish minimum standards with respect to sound management and accountability of programs under this part."

Department regulations also define "Third-party servicer" at [34 CFR 668.2](#) predominantly in terms associated with financial management. The introductory paragraph of the definition is patterned directly after the statutory definition of "Third party servicer" at [20 USC 1088\(c\)](#), and speaks of contracts "to administer, through either manual or automated processing" the institution's participation in "any Title IV, HEA program." The term "Title IV, HEA program" is then described at [34 CFR 668.1\(c\)](#), and refers to "any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended." That section then lists twelve Title IV, HEA programs, such as the Pell Grant, Stafford Loan, Perkins Loan, and Federal Work-Study Programs, to name a few.

The Department's definition of TPS at [34 CFR 668.2](#) also provides a list of functions that would be covered by TPS protocols if they are performed by a third-party servicer. All of the functions listed in the regulation relate to administrative, technical, financial or business "services" that support an institution's handling of Title IV, HEA program *funding*. Although the list is non-exclusive, the "manual or automated processing" language in the definition preface of both the statute and the regulation, and the fact that all the examples given in the regulatory list relate to financial aid funding specifics, has been reasonably understood to exclude the type of non-

financial functions that the Department now seeks to include within the scope of TPS protocols. The exclusion of certain services and functions in the regulatory definition further supports the notion that the third-party servicer definition and scope is meant to be limited.

In addition, Department regulations at 34 CFR Part 688 Subpart G – Fine, Limitation, Suspension and Termination Proceedings, the “teeth” of the Department regulations, establish the consequences of malfeasance of “a participating institution or third-party servicer.” The regulations note that a third-party servicer is acting “in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.”

Government Accountability Office (GAO) agrees with the pre-existing TPS definition.

This common-sense understanding of “third-party servicer” as being specific to administration of the funding aspects of Title IV programs is shared not only by the regulated community, but by the government as well. GAO Report GAO-22-104463, cited by the Department as a catalyst for its present actions to expand the definition of “third-party servicer,” contains this illuminating footnote in its report to Congress:

“We use the term third party in this report to represent outside entities with which colleges may enter into arrangements. We use this term to include both for-profit companies and nonprofit organizations. **We are not referring exclusively to "third party servicers" as the term is defined in the Higher Education Act, which describes entities that perform specific financial aid administration services for colleges.**”
(Emphasis added)

The GAO’s definition is significant as it articulates the consensus definition of a TPS in the very document cited by the Department as the impetus for its changes.

TPS definition functionally ends agreements, partnerships, and educational opportunities.

The expansion of the TPS definition to include third party entities “performing the functions of student recruiting and retention” and “the provision of educational content and instruction” does not simply subject those persons and entities to new oversight and reporting requirements. It could also sever some of these persons’ and entities’ eligibility to enter into almost any contract with a U.S. Title IV institution. Specifically, and without identifying statutory or regulatory authority, the DCL states that “an institution may not contract with a TPS to perform any aspect of the institution’s participation in a Title IV program if the servicer (or its subcontractors) is located outside of the United States or is owned or operated by an individual who is not a U.S. citizen or national or a lawful U.S. permanent resident. This prohibition applies to both foreign and domestic institutions.”

We are heartened by the Department’s statement in the DCL that “[w]e are especially interested in comments on the impact of continuing the existing limitation on institutions contracting with third-party servicers operating outside the United States or owned or operated by individuals who are not U.S. citizens, nationals, or permanent residents.” This prohibition on contracting

with entities operating outside the United States will debilitate international education. It will functionally end many agreements and partnerships formed specifically to allow global educational opportunities for U.S. students and to enrich U.S. institutions through identifying international students who will bring unique, global perspectives to campus communities. It would impede global mobility. International students could not come to the United States to study nor could they do a short-term study abroad even if they were in the United States.

Such a limitation may make sense regarding third party entities that perform specific financial aid administration services for an eligible institution (i.e., under the long-held prior understanding of the definition of “third-party servicer”). However, the rationale does not extend to restrictions for entities that, by their nature and without performing any administration of Title IV aid, merely facilitate study abroad programming and educational content and instruction or international student recruitment.

The DCL will end nearly all current study abroad programming.

Prohibiting contracts with foreign entities would make unavailable most education and study abroad programs and exchanges, except for the small number that are constructed and taught by faculty hired by the U.S. institution. It would also restrict the locations to those most likely to have U.S.-owned services and campuses, which would narrow the variety of experiences available to U.S. students. It may even shut down established international campuses of U.S. institutions that have been key components of the institutions’ offerings to its U.S. students, and their representations about available programs.

Study abroad has long been recognized as a learning opportunity that enables students to develop critical skills and that contributes in vital ways to preparing students for the competitive global environment into which they will graduate. [Multiple large-scale studies](#) have found that students who study abroad, especially underrepresented or “at-risk” students, are more likely to complete their degrees or certificate programs than students who did not study abroad. Community college students who studied abroad were more likely to transfer to a 4-year institution than students who did not. First and second year retention rates for those students who study abroad are also considerably higher. [Several studies](#) have shown that students who study abroad have higher grade point averages than similar students who stayed on campus, even when controlling for external factors.

Study abroad is embraced by various federal agencies as a positive experience for U.S. students and a component to advance U.S. domestic and international priorities. The U.S. State Department has long valued study abroad as a diplomatic tool and as an integral component of U.S. higher education. “The [U.S. Department of State is committed to expanding study abroad](#) opportunities for American students to gain critical skills to support our national security and economic prosperity.” Yet the DCL prohibiting contracts with foreign entities flies in the face of the Department's [Joint Statement of Principles in Support of International Education](#) published in July 2021 in partnership with the State Department.

The HEA and Department regulations specifically recognize the legitimacy of study abroad, which is always delivered by parties who are located abroad, or who might not be U.S. citizens,

nationals, or permanent residents. The broad scope of the revised TPS definition and related requirements places vast swaths of programs abroad into jeopardy. Prior to the COVID-19 pandemic, nearly 350,000 U.S. students participated in study abroad for academic credit during the 2018-2019 academic year (*Open Doors 2020*).

Study abroad is specifically recognized in the HEA and Department regulations in the following ways:

- **Student eligibility for grants, loans, or work assistance.** “In order to receive any grant, loan, or work assistance under this subchapter, a student must- (1) be enrolled or accepted for enrollment in a degree, certificate, or other program (**including a program of study abroad** approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution...” HEA, 20 USC 1091(a) (emphasis added);
- **Maintaining access to study abroad.** Directly referencing study abroad, the regulation states, “Nothing in this chapter shall be construed to limit or otherwise prohibit access to **study abroad programs** approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of **study abroad** approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive grant, loan, or work assistance under this subchapter, without regard to whether such **study abroad program** is required as part of the student’s degree program.” HEA, 20 USC 1091(o) (emphasis added);
- **Agreements between U.S. institutions and those in other countries.** “**Written arrangements for study-abroad.** Under a **study abroad program**, if an eligible institution enters into a written arrangement under which an institution in another country, or an organization acting on behalf of an institution in another country, provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.” 34 CFR 668.5(b) (emphasis added); and
- **Title IV eligibility.** “A student enrolled in a **program of study abroad** is eligible to receive title IV, HEA program assistance if - (a) The student remains enrolled as a regular student in an eligible program at an eligible institution during his or her **program of study abroad**; and (b) The eligible institution approves the **program of study abroad** for academic credit. However, the **study abroad program** need not be required as part of the student's eligible degree program.” 34 CFR 668.39 (emphasis added).

As explained below in more detail, study abroad, by its nature, involves international providers and partners. Many study abroad programs may have an international contract related to course content and assessment. This long-standing process is not a new innovation, cost savings strategy or a means to use aid in a way not intended by the Department.

The DCL disrupts the goals of study abroad.

If the DCL remains unchanged, below are examples of prohibited programs and activities that institutions would be prevented from offering because the respective entities are: (1) located outside of the United States or; (2) owned or operated by an individual who is not a U.S. citizen, national, or a lawful U.S. permanent resident:

- **Logistics and housing.** Study abroad programs rely on overseas entities, contractors, subcontractors and others to provide critical on-the-ground, in-country services. U.S. students are at higher risk if local experts are not used to plan itineraries, provide transportation services, housing, classroom space, and other location-specific needs. Not using local experts is also counter to basic international risk management.
- **Programs abroad with local support.** Many U.S. schools who run their own programs abroad still do so with onsite local support. These contracts increase student learning, student cultural exposure and learning.
- **Reciprocal relationships with foreign institutions.** Many U.S. institutions have reciprocal exchange relationships with foreign institutions. U.S. students pay tuition at their home institution, often using Title IV funds, and then study at the foreign institution, receiving credits toward their degree. Under the examples in the current DCL guidance, the foreign institution may be a TPS that delivers instruction, assesses student learning, and develops curricula. This exchange model typically includes inbound international students enrolling at the reciprocating partner in the United States.
- **Partnerships with study abroad providers.** U.S. institutions often provide study abroad opportunities through partnerships with private-sector providers in order to make study abroad available in a wider variety of locations and in more subjects than a single U.S. institution could offer alone. A U.S. college or university vets each provider to ensure that the programs they offer are academically sound and meet standards for the safety of students. These providers interact with prospective students for the purposes of recruiting, setting deadlines, administering applications, providing site-specific orientations, maintaining contact with local faculty, and furnishing housing and transportation. They may also develop curriculum and assess students.
- **Faculty-led programs that include course-required instruction with or through partner institutions.** Programs that are faculty-led use diverse models and include: host institutions with a U.S. faculty member supervising on-site (such as a semester abroad at a foreign institution); faculty-led research or partnership programs with host institutions that have U.S. faculty on-site (such as a foreign institution hosting a U.S. faculty member and co-teaching alongside the foreign institution's instructors); and study abroad providers that facilitate onsite instruction and support for U.S. faculty members (such as when a language is taught by local instructors while other courses are taught by U.S. faculty).
- **Experiential learning programs abroad (or domestically, with a non-U.S.-based organization).** If "experiential learning" is considered "instruction" for the purpose of TPS regulations, this could bar internships, externships, community-based learning, leadership programs, or other program activities that include an on-the-job component.

- **U.S. institution-supported individual internships abroad.** Through partners or alumni networks abroad, students earn U.S. institution-credit according to existing internship policy and could potentially use financial aid to support their living expenses abroad.
- **Mentor and developmental programs.** Participation in programs for credit that provide mentors for students and provides reflective or developmental programming to augment internship experiences.

Use of Title IV funding for U.S. students to study abroad.

The new DCL would disproportionately impact access to study abroad for students of need, when compared with students who come from wealthier families. If Title IV funding is not available for U.S. students to study abroad, those programs that do remain will be out of reach for all but the wealthiest Americans. The DCL would prevent tens of thousands of students who receive need-based aid from benefitting from the life changing experience of studying abroad. As more schools make studying abroad a requirement for graduation, students may be less likely to enroll in such a school if they believe they will not be able to fulfill that requirement without the use of federal financial aid. In reducing the number of students who can study abroad, we could see significant negative impact on students' grade point average, graduation rates, and overall access to life changing opportunities. Removing access to financial aid will only further expand the socioeconomic disparity in accessing study abroad opportunities.

The State Department and Defense Department both support study abroad opportunities for U.S. students who utilize Title IV funding to participate in study abroad. Students receiving U.S. Department of State's [Benjamin A. Gilman International Scholarship Program](#), [Boren Awards for International Study](#), [National Security Education Program](#), [Defense Language and National Security Education Office](#), and other U.S.-funded scholarships participate in study abroad using all of the models that would be barred by the DCL. What's more, the Department's own HEA-Title VI and Fulbright-Hays programs that support every international education modality, including study, internships, and research abroad and higher education institutional linkages, would be severely impacted as well.

Allow effective international student recruitment abroad.

U.S. higher education institutions are also in a global competition to attract and retain international students. Institutions must diversify the pool of international students who choose to study at their institutions to be competitive today and prepare for future years. Working with recruiters who have local insight may provide a critical advantage by providing knowledge of education, culture, and country-specific circumstances. This may be especially true for lower resourced institutions and schools that are not well known internationally.

Per the DCL, U.S. higher education institutions would be barred from utilizing any non-U.S. third-party agents or outside entities contracted to perform recruitment and admission counseling functions for the institutions. These recruiters act on behalf of the institutions to provide information, advising on admission process, and other information to prospective students. A large majority of the entities that are currently used to recruit international students are foreign

owned entities. Contracting with these recruitment agents and aggregators would need to be examined or halted.

Yet HEA and Department regulations also specifically recognize the legitimacy of international student recruitment, components of which often take place abroad and might be undertaken by parties who are not U.S. citizens, nationals, or permanent residents. The Department pointed to GAO report [GAO-22-104463](#) as a basis for its current expansion of the definition of “third party servicer.” That report was concerned principally with compliance and enforcement of the rule that prohibits incentive payments paid to student recruiters. Notably, those restrictions expressly do “not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance”—an exception that tacitly recognizes that work with these students does not involve administration of Title IV programs. See [20 USC 1094\(a\)\(20\)](#) and [34 CFR 668.14\(b\)\(22\)](#).

We ask the Department to specifically clarify that third party student recruiters are excluded from the scope of the DCL’s third-party servicer guidance, both with respect to the Recruitment- and Application-Related Activities examples and foreign ownership or operations prohibitions. If the Department wishes to receive better information and documentation to monitor compliance with the prohibition against incentive payments to third party recruiters, it should build a regulatory framework and information collection tool to accomplish that goal.

Limits on content developers and providers could eliminate study abroad options.

The Department also attempts to use the DCL to bootstrap content developers and providers into the third-party servicer definition, even though they are not providing services related to the management of Title IV funding.

We recognize and support the Department’s interests and concerns about compliance with the requirement at 34 CFR 668.5 that an ineligible institution provide no more than 25 percent of an eligible educational program through a written arrangement with an eligible educational institution (and in some cases up to 50 percent), as outlined in Dear Colleague Letter [GEN-22-07: Written Arrangements Between Title IV-Eligible Institutions and Ineligible Third-Party Entities Providing a Portion of an Academic Program](#) (June 16, 2022). But this should be viewed as a continuing condition of eligibility that is attenuated from the administration of the financial aspects of the various Federal financial aid programs.

In addition, the DCL as written would implement a TPS definition that effectively eliminates the provision of *any* percentage of an educational program by a non-U.S. entity, including study abroad programs. This sub-regulatory expansion of the TPS definition beyond its financial focus is improper. If the Department wishes to receive better information and documentation to monitor compliance with the percentage limits on instruction delivered by ineligible entities, it should build a regulatory framework and information collection tool to accomplish that goal.

Other international partnerships will be disrupted.

With transnational partnerships in U.S. academia, there is no “one size fits all” approach. Partnerships range from bilateral, to consortium, to networks and beyond. Mobility patterns can involve study, internships, and research and can be degree or non-degree oriented. Mobility can include students, scholars, and faculty. The scenarios included below demonstrate a range of possibilities that may be disrupted by the DCL:

- **Degree seeking partnerships.** For degree seeking partnerships like dual degree programs, students will often complete credits at each of the partner institutions involved at specified periods of time to earn two degrees. In this case, students may receive some of the same services as study abroad students for the period of time they are attending the partner institution. Students may complete the time at the partner institution in-person or virtually. Both partner institutions play a role in recruitment and student support for the period of time that the students are at that institution. U.S. students are able to use financial aid and scholarships for the period of time they are enrolled in the U.S. institution and possibly for the period of time they are abroad depending on the partnership schema.
- **Transfer articulation agreements.** A transfer articulation agreement guarantees that classes completed at one school will be accepted when a student transfers to another school. These are similar to community college transfer arrangements in the United States, but agreements are made with foreign higher education institutions. The length of time of study at each institution varies (2+2, 3+1, 3+2, etc.). These agreements with selected partner institutions abroad are a recruitment strategy for U.S. institutions. In this scenario, the partner abroad is helping to recruit students for the U.S. institution and offering the students a pathway to earn a U.S. degree at a lower cost.
- **In-person internship programs offered in partnership with a placement agency.** Some internship programs require partnership with a third-party to source host organizations placements for students. Providers may be U.S.-based but may have on-site offices in the host location outside the United States. These providers (through host-site staff) also provide on-site support to students, help with employment problems, provide alternative placements when needed, and help facilitate immigration requirements.
- **Technology platforms that support or fully provide for-credit learning.** It is unclear if the TPS language applies only to full-time online programs (such as degree programs) or if it extends to technology that supports for-credit programming by non-U.S.-based providers. This could impact virtual student exchange where learning platforms are hosted by foreign institutions.
- **Other technology.** As online learning expands, it is unclear the impact of the DCL on online curricula or digital learning badges, or other fully online learning experiences that involve non-U.S. partnerships or collaborations.

We ask the Department to specifically clarify that international partnerships and agreements are excluded from the scope of the DCL’s third-party servicer guidance, particularly from the condition that prohibits an entity “operating outside the United States or owned or operated by

individuals who are not U.S. citizens, nationals, or permanent residents” from contracting with an eligible institution.

If the Department wishes to receive better information and documentation to understand international agreements and partnerships it should build a regulatory framework and information collection tool to accomplish that goal.

The DCL presents a challenge to attracting and retaining international talent.

Another byproduct of this new "guidance" is that it will make it harder to attract top international talent to the United States. Direct exchanges set the groundwork for potential future leaders (whether they be in the academic, business, or nonprofit sector) who will see the U.S. as a place to build their careers. Globally-mobile students seek opportunities for long-term partnerships and collaborative research. If that is not possible in the United States, they will go to other countries with policies that recognize the global nature of education and research. This will diminish the pool of talented people who could contribute to the U.S. economy and competitiveness and cost the U.S. billions of dollars a year in lost revenue. For example, NAFSA conducts an [annual economic analysis](#) of the contributions of international students studying at U.S. colleges and universities; the latest analysis for the 2021-2022 academic year showed international students contributed \$33.8 billion to the U.S. economy and supported over 335,000 U.S. jobs.

Withdraw the Dear Colleague Letter and pursue rulemaking.

In summation, we urge the Department to withdraw its Dear Colleague Letter and pursue rulemaking under the APA instead of expanding the coverage of the “third-party servicer” definition so far beyond the common financial understanding of the word “servicer” and so unlike the examples found in the third-party servicer definition.

The rulemaking process will allow the Department to better assess how its proposed changes will affect the regulated community and when those proposed changes may exceed its statutory and regulatory authority. It will also afford the Department the opportunity to create a regulation with the force and effect of law. As the Department acknowledged in 2021, “[a] DCL is, at most, an interpretive rule, not a regulation subject to the notice-and-comment rulemaking process under the Administrative Procedure Act...” *In the Matter of Navient Corp.*, 2021 WL 9493272 (ED.O.H.A.) (January 15, 2021).

Any rulemaking should make clear that the scope of the “third-party servicer” definition is limited to contracts involving “manual or automated processing” of an institution’s administration of Title IV program funding. The definition should not include providing educational programming, student recruiting or retention, or logistical or technical support not involving the administration of Title IV program funds.

The Department correctly points out in the DCL that the provision of instructional content and student recruitment are already “subject to important statutory and regulatory limitations, such as the prohibition on incentive compensation for recruitment and limitations on the percentage of an academic program that can be provided by an ineligible institution or organization.”

But then the Department claims that “the performance of these functions subjects an entity to TPS requirements,” and that “the Department’s recent review of these functions, and the 2022 GAO report cited above, have made clear that the Department must conduct oversight of the entities performing these functions to ensure compliance with the TPS requirements.” This is an unreasonable legal leap.

Although some of the Department’s concerns may be legitimate, the mere existence of a robust, pre-existing Title IV funding-focused “third-party servicer” protocol does not justify plugging in to that protocol merely because it would be convenient for the Department to do so.

If the Department wishes to receive better information and documentation to monitor compliance with non-financial aspects of the activities and conditions mentioned in the HEA, it should build regulatory frameworks and information collection tools to accomplish those goals through the APA rulemaking process.

The regulated community should be a part of that development, which is the purpose of the rulemaking process. For example, the Department could work with the community to define new types of “third-parties” that could be appropriately tailored to meet Department needs and business realities. A recent example of such an action is the negotiated rulemaking process that resulted in a final rule published at [87 FR 65904 \(November 1, 2022\)](#), effective July 1, 2023, which created a new definition of “third-party requestor” to encompass State requestors and “legal assistance organizations” (also newly defined in the regulations) that will allow such third-party requestor the ability to request group formation, subject to certain conditions.

Defining new types of “third-parties” should be viewed as a long-term process that first studies and then acts on incorporating Department oversight in the context of modern reality, and the particular needs of international education and the students it serves. Although this will take time, it is the right process to use.

Sincerely,

[Signature Redacted]

Fanta Aw, PhD
Executive Director and CEO

On behalf of:

Alliance for International Exchange
American International Recruitment Council
The Association of International Education Administrators (AIEA)
Community Colleges for International Development
Council on International Educational Exchange
Diversity Abroad
EnglishUSA
The Forum on Education Abroad
The Fund for Education Abroad

IES Abroad
IFSA: Institute for Study Abroad
Institute of International Education
NAFSA: Association of International Educators
Presidents' Alliance on Higher Education and Immigration
TESOL International Association
World Learning

cc: Annmarie Weisman, Secretary Deputy Assistant Secretary for Policy, Planning, and
Innovation, Office of Postsecondary Education