



March 14, 2023

Ms. Ashley Clark  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

RE: **Docket ID ED-2023-OPE-0030**

Dear Ms. Clark:

The Middle States Commission on Higher Education (MSCHE) appreciates the opportunity to provide comment in response to the Department's Request for Information regarding the bundled services exception to the incentive compensation ban, Docket ID: ED-2023-OPE-0030, Federal Register Number 2023-03261, February 16, 2023. Our agency has also encouraged institutional representatives to submit comment in response to this request through one of our advocacy alerts.

As you are aware, MSCHE is a voluntary, non-governmental institutional accreditor that has been recognized by the United States Secretary of Education since 1952. As an accreditor, MSCHE assures students and the public of the educational quality for its over 500 institutions of higher education. The Commission's accreditation process ensures institutional accountability, self-appraisal, improvement, and innovation through peer review and the rigorous application of standards within the context of institutional mission.

Our agency appreciates the Department's efforts to understand the impact of the bundled services exception. As an institutional accreditor, we hold institutions responsible for anything done in their name, and the accreditation processes of MSCHE already provide opportunities for oversight, including a rigorous accreditation review cycle, thorough monitoring procedures, and a well-established substantive change approval process.

With regard to our agency's accreditation review cycle and monitoring procedures, attention is placed upon what we refer to as *third-party providers*. Third-party providers reflect unaccredited organizations that enter into arrangements with an accredited institution to outsource a portion of the institution's educational programs or services. Our Commission's Standards II (Ethics and Integrity), III (Design and Delivery of the Student Learning Experience), IV (Support of the Student Experience), and V (Educational Effectiveness Assessment) serve as examples of the sources of evaluation during self-study in addition to other relevant policies and procedures. Our agency subscribes to the principle that institutions must maintain appropriate levels of oversight for educational programs and services through the maintenance of systematic processes that ensure the institutional capacity to carry out its oversight responsibilities. Existing MSCHE policy, procedures, standards, and requirements attempt to balance the need for innovation by institutions that is grounded in best practices with awareness of the challenges that third-party provider arrangements can present.

Another mechanism that allows the Commission to monitor arrangements includes our policy and procedures on *Complaints Involving Member and Candidate Institutions* along with our corresponding third-party comment process. Our Commission recognizes the value of information provided by students and other constituents in determining whether an institution's performance is consistent with the Commission's standards and expectations for accreditation.

In addition, the Commission has monitoring procedures that provide additional mechanisms that enable us to maintain a continued focus on any issues that may emerge regarding third-party providers. The primary mechanism is through requests for *Supplemental Information Reports* (SIR) where institutions provide additional information to the Commission, and the Commission then has available a range of actions in response to the report.

Finally, our substantive change procedures allow for the regular review and approval of written arrangements. These procedures were most recently revised to meet the requirements of the June 16, 2022, *Dear Colleague Letter* regarding written arrangements between title IV-eligible institutions and ineligible third-party entities. Our process for approval of written arrangements requires the review of aspects of contractual relationships that speak to the institution's ability to maintain control and oversight of programs, including provisions related to incentive compensation, recruiting, and marketing.

Even with the focus that MSCHE places on understanding the contractual arrangements of its institutions as part of our responsibilities in the regulatory triad, the Department could provide more specific guidance for accreditors and institutions about expectations relating to written arrangements to clarify the Department's position. This is especially relevant for title-IV institutions that rely upon written arrangements with international third-party entities. In the event that the Department begins to collect information pursuant to the guidance on Requirements and Responsibilities for Third Party Servicers and Institutions issued on February 15, 2023, we want to encourage the Department to make any information collected easily accessible and to consider a process for sharing it with accreditors on a regular basis using an existing tool, such as the Eligibility Certification and Approval Report (ECAR). This would allow the Department to not only enhance information sharing but would minimize our agency creating additional or duplicative reporting requirements for institutions.

Please contact me if I can provide any further information.

Sincerely,



Heather F. Perfetti, J.D., Ed.D.  
President