December 8, 2023

Secretary Miguel Cardona
United States Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Secretary Cardona,

Over the past five years, 2U saw massive growth, partially driven by the acquisition of edX. This growth appears to have been unsustainable and often driven by business arrangements that appear to be extractive. In the wake of 2U and USC parting ways, 2U's stock price has hovered around $1, down from a peak of over $70 a share in early 2019. This precipitous drop raises concerns about the future of 2U and what could happen to the tens of thousands of students enrolled at the multitude of institutions under contract with this large OPM. As of late, the OPM space as a whole has been marked by instability and fractured relationships with institutional partners.

While ending most of its partnerships with USC, 2U has simultaneously opened several new degree programs, including dozens of new undergraduate programs at Maryville University - a university whose online programs were previously operated by Pearson. Academic Partnerships is in the process of acquiring Wiley's OPM operation, and Pearson's OPM, actively in decline, was sold and rebranded by its new private equity backed owners. This shake-up in the OPM market raises questions about the wellbeing of students who may find themselves caught in the middle. Among them: Are regulators prepared for the fallout from the potential collapse of a major OPM? How will regulators ensure that schools protect students from harm?

Institutions are responsible for the performance and outcomes of the programs they offer, even if there is heavy involvement of a third party like an OPM. In the event of an OPM closure, a change in OPM ownership, or contract cancellations, regulators– including the Department, accrediting agencies, and States, should safeguard the public investment that goes into OPM-managed programs by asking colleges with such contracts the following questions:

- Program Continuity
    - Is the institution planning to continue or discontinue the programs?
    - If closing, what is the plan for teaching-out current students?
    - If continuing by transferring to a new owner, what is the plan for informing students and ensuring continuity of service? Historically, changes in management and ownership of for-profit education providers have yielded bad outcomes.

- How is the institution planning to manage any drop in staffing numbers for their OPM-managed programs? Which institutional staff would be in place to support continuation of the program?
    - If continuing by moving services in-house, does the institution have adequate resources? What support would need to be in place to ensure this?
- Student Records
    - To what extent do institutions have the contact information for their prospective, current, and past online students?
    - How are institutions ensuring they'll maintain access to prospective student and enrollment applicant records?
    - Will institutions have access to student records of course attendance and performance?
- Content Development
    - To what extent are institutions prepared to take ownership of content creation for currently enrolled students?
    - To what extent will institutions have access to content that was previously created by an OPM contractor?
    - To what extent will currently enrolled students be able to maintain access to course sites, materials, and content?
- Compliance
    - In the event of the collapse of an OPM and the need for a sudden change of OPM partnership, to what extent are institutions prepared to monitor and ensure compliance with federal standards in their new OPM partnership?

Regulators should also put plans in place to protect and assist borrowers in the event of OPM collapse, including a 2U or other OPM-managed program closure. 2U reported it had 375,000 students between its founding and 2021, and after acquiring edX, that number shot up to 73 million worldwide. 2U estimates it gets 29% of its revenue from U.S. federal student aid sources (loans and Pell grants). If an OPM of 2U's size were to close precipitously, it would impact tens of thousands of students across dozens of institutions. It is unclear what protection students will have should an OPM collapse. Precipitous closures at the scale OPMs represent have only happened with institutions where the regulatory protections were clearer. We urge the department to consider how it will respond to protect students and hold colleges and the OPM accountable, should a collapse leave tens of thousands of students without a program to complete. The Department should take the time to assess what options are available to it to assist federal student loan borrowers who may be left without a program to attend, even if the college they are enrolled in exists. Specifically, in the event of an OPM collapse, the Department should:

- conduct outreach to all affected students about their options;

- consider what lessons were learned from the long journey to provide relief to Corinthian borrowers and apply these lessons in order to best prepare to provide immediate relief to the OPM's borrowers upon the company's collapse; and
- anticipate which obstacles it may face if it chooses to provide relief to the OPM's federal borrowers, such as factors that might prolong the process, and how student advocates can support the Department's process.

If 2U were a college or university, it would be the 8th largest by enrollment. And no matter its size, if it were an institution operating with the direct approval of the Department of Education, 2U would have come onto the agency's radar long ago as being at risk of closure. While it is challenging to make direct comparisons between the Department's composite score, the heightened cash monitoring system (HCM) and the finances of a private company, there are several indications that suggest 2U would be on HCM if it were a college.

Determining whether a school should be placed on HCM is based on the composite score, along with other factors, including debt load, cash reserves, and ability to cover other financial obligations such as payroll. Several indicators suggest 2U, if looked at as a college, would raise cause for concern for the Department based on these standards.

2U has gone from having a cash reserve of over half a billion dollars in late 2021, to just over fifty million at its last report. The company also laid off twelve percent of its staff over the past few months in an attempt to cut costs. In addition, 2U refinanced a large portion of its almost $880 million in corporate debt at the start of 2023. However, this was done when the stock price was sitting at around $7 a share. With the price now hovering at roughly $1 per share, it is unclear whether the company will continue to find it as easy to refinance its considerable debt load. One financial analyst described 2U's recent actions as a "fire sale to stay afloat."

The Department should consider what it would typically require when regulating an institution that was operating in the same precarious manner in which 2U and other OPMs are currently operating. The Department needs to act now so it can accurately assign liabilities should programs precipitously close.

To prevent scenarios where the Department needs to step in, it should immediately move to:

1. **Rescind the 2011 bundled services guidance.**[1] The Higher Education Act forbids any rewards or incentives linked to successfully recruiting students for enrollment. However, in 2011, the Department created a loophole that allows incentive payments if recruitment

[1]https://www.ed.gov/news/press-releases/us-department-education-launches-review-prohibition-incentive-compensation-college-recruiters

is part of a bundle of services offered by independent contractors like Online Program Managers (OPMs). The 2011 policy allows colleges and OPMs to make deals where OPMs earn based on the tuition revenue they generate.

In 2001, the Department of Education's Office of Inspector General (OIG) openly disagreed with this interpretation of the federal ban on incentive payments to recruiters and viewed agreements with OPMs that include revenue-sharing as a violation of the law. The concern is that such arrangements encourage aggressive and potentially misleading recruitment practices, which the law aimed to prevent.

The Department of Education indicated in early 2023 that it was reconsidering its guidance on this matter. Acting swiftly to realign its policies with the original intent of the law will pay dividends in protecting online students, no matter the footing of their OPM.

2. **Conduct appropriate OPM contract oversight through updated third-party servicer guidance.** Updating the third-party servicer guidance to include parties that contract with colleges to provide recruitment, retention, marketing, and any academic services ensures two things. One, that the third party is compliant with federal rules, and two, the Department has a mechanism for direct oversight and enforcement when needed.

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

Sincerely,

Dr. Amber Villalobos, Fellow, The Century Foundation
Dr. Stephanie Hall, Acting Senior Director for Higher Education, Center for American Progress
Dr. Edward Conroy, Senior Policy Advisor, New America Higher Education Program

cc: Under Secretary James Kvaal
Senator Bernard Sanders
Representative Bobby Scott