

April 21, 2023

Nasser Paydar, Ph.D.
Assistant Secretary for Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED–2023–OPE–0039, Intent to Establish Negotiated Rulemaking Committee

Dear Assistant Secretary Paydar:

The Association of Community College Trustees (ACCT) appreciates the opportunity to provide comments on the forthcoming negotiated rulemaking process via this public comment.

ACCT is a non-profit educational organization of governing boards, representing more than 6,500 elected and appointed trustees who govern over 1,200 community, technical, and junior colleges in the United States and beyond. Trustees have the fiduciary responsibility of their institution and responsibility for hiring the college leadership. Further, trustees are leaders in their community and are concerned with the health of the community college sector. In this role, they take their duties of both board governance and advocacy on behalf of their colleges seriously.

On February 15th, the Department sent a Dear Colleague Letter “Requirements and Responsibilities for Third-Party Servicers and Institutions” that specified and dramatically expanded the entities classified as third-party servicers. We appreciate the Department’s update via a statement from Undersecretary James Kvaal to this letter on April 11, announcing that the September 1 effective date is canceled, and that further guidance will be issued with an effective date at least six months after the new guidance is released. In particular, ACCT supports the clarification that consortia of Title IV eligible institutions, study abroad programs, and externships/clinicals do not constitute third-party service agreements.

In the Dear Colleague Letter, the Department stated that in particular it wanted to focus on the growing industry of online program managers, or purveyors of software products designed to manage student recruitment, retention, and hybrid courses. While it is necessary for guidance and regulation to keep pace with technological advancements, it is also crucial that these rules be designed with a precise nature to target the intended actors rather than be so broad as to implicate many others, including non-profit organizations and associations, in their general reach.

For this reason, ACCT encourages the Department to include Third Party Servicing in its fall 2023 negotiated rule-making process to determine the best path forward in regulating third-party servicers.

As a representative of community colleges, ACCT is specifically concerned with the impact this expanded change will have on our institutions. Negotiated rule-making would allow for further clarification regarding businesses that provide training on campus, a hallmark of many trade and technical programs, as well as the role of entities providing student retention services.

As an association and non-profit, it is possible that ACCT would also become a third-party servicer depending on the specific guidance on student retention. Within the ACCT Center for Policy and Practice, ACCT staff and partners work on projects that include college retention as a stated goal. None of these activities relate to Title IV dollars nor grant us, our partners, or our contracted consultants access to student data. We recommend that partners providing retention services that do not include Title IV aid or student personal identifying information or similar data be excluded from third-party servicer requirements.

The current legal uncertainty with the third-party servicers definition may also unnecessarily generate increased compliance costs for our institutions, many of which already face significant resource constraints in serving their students. For this reason, commitment to a six-month implementation window is necessary.

ACCT strongly encourages the Department to consider the expansion of the third-party servicer rule as part of this fall's negotiated rule-making process to ensure a surgical approach that reaches the intended goals and audience, rather than a catch-all approach that balloons the number of third-party servicers in such a way that those who may be abusing the privilege of working with students and institutions fall through the cracks.

Thank you for the opportunity to provide this feedback.

Sincerely,

A handwritten signature in black ink, appearing to read "Jee Hang Lee". The signature is fluid and cursive, with the first name "Jee" being the most prominent.

Jee Hang Lee
President and CEO
Association of Community College Trustees