OUTSOURCING ONLINE PROGRAMS:

POLICY OPTIONS FOR OPM OVERSIGHT

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As a form of outsourcing in higher education, online program management (OPM) is not remarkable. Universities regularly, and with little fanfare, outsource many functions that used to be done in-house. Bookstores, dining halls, housing facilities, parking garages, and housekeeping are all part of the outsourcing model in American higher education. It is not just facilities and auxiliary services where this outsourcing occurs. With technology, everything from email to enterprise systems are outsourced. Outsourcing international activities, such as with the recruitment of international students, English-language pathway programs, and study abroad, is common. Introductory '101' courses taught by a third party are accepted for transfer credit by well over a hundred institutions. In some ways, OPM outsourcing is no different than these examples. And yet, while some of these activities have raised questions and debate, virtually none has attracted the kind of attention that OPMs have seen. Although superficially similar, clearly the perceived impact of OPM outsourcing is of a different magnitude.

This brief is intended to explain why the "OPM" phenomenon is looked at differently, and propose some policy options that may productively guide current and future regulation[1]. It is premised on the notion that OPMs are an unanticipated development in higher education. The phenomenon currently exists in a liminal state, with regulatory oversight having little direct involvement. Policymakers and accreditation agencies need to consider if the present laissez-faire approach is appropriate, or if a more focused regulatory agenda is needed.

WHAT ARE OPMs

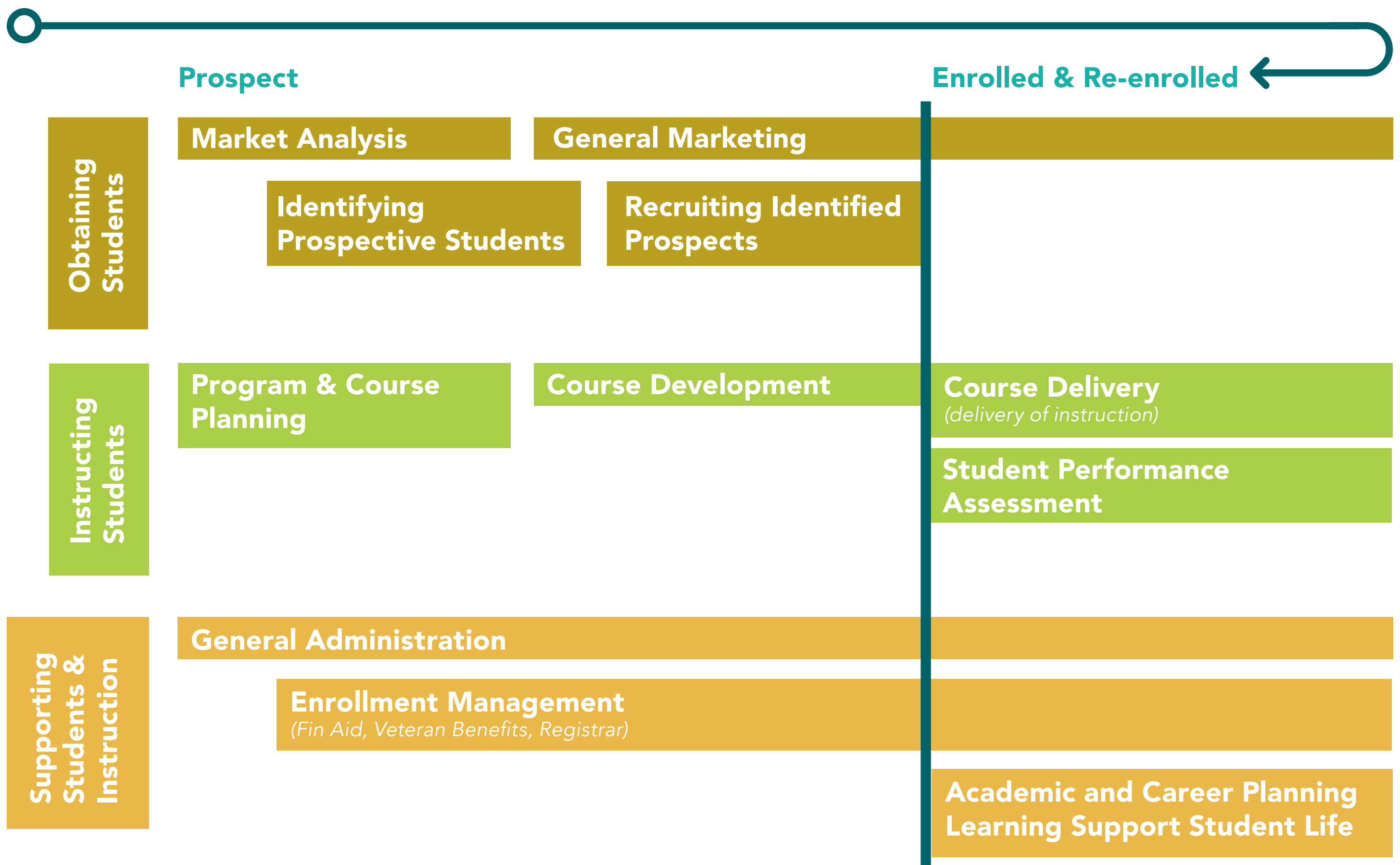
Online program management refers broadly to the structures and personnel that colleges and universities use to provide distance education courses and credentials. The regular structures of a university typically work to create, deliver, and maintain traditional campus-based academic programs in-house. Because the work associated with online programs differs from that of in-person programs in meaningful ways, any significant online activity requires dedicated support services. These support services can be achieved through an internal administrative unit that handles things such as market analysis, student recruitment, instructional design, and ongoing program enhancements. In other cases, colleges and universities contract with an outside firm to do this work. These external firms are called "OPMs."

OPM firms are distinct from typical technology support in that they actively *manage* the development and expansion of online programs for the partnering institution. OPM firm involvement can range from daily operations to back-end support to strategic and decision-making focus. Often OPM agreements are described as offering "technology services" or "technology vendors." This generic terminology makes OPM agreements seem more closely related to contracts universities have with other vendors, like those for enterprise systems.[2] However, OPM firms do not simply provide access to tools that the university uses to support faculty instruction. Rather they focus on

coordinating the work necessary to create, deliver, and maintain an online program. In our research on OPMs, we emphasize the multifaceted nature of this engagement with the university, defining the OPM phenomenon as "the outsourcing of a suite of services that leads the external provider to participate in the management of the online program" (Cheslock, et al 2021).

The "suite of services" necessary to deliver an online program is represented in figure 1. We divide the services into three major buckets: Obtaining students, instructing students, and supporting students and instruction. How this works in the online space is different than for in-person programs. Obtaining students for campus programs is either geographically constrained to the local community or focused on recent graduates of lower levels of education. Prospects for online programs are more likely to be adult students and geographically dispersed, so strategies for finding and recruiting students are different in each case. Market analysis takes a more significant role in online programs because there is no easy source that can identify prospects and enrollment competition can come from anywhere. Instructing students in online environments involves unbundling course development from course delivery and includes asynchronous components that remove the faculty member from real-time interactions with the student. The curriculum may involve input from a team of subject matter experts and instructional designers, who provide the instructor with everything necessary to conduct the course. Student support and support for instruction in the

FIGURE 1: The Production of Online Education Central Tasks



Note: Each box represents an activity related to online education.

online model is not dependent on in-person office hours and involves a wide array of other activities associated with ensuring quality online education is accessible to students.

Not all OPM agreements touch on all three buckets. OPM firms can offer different "suites" depending on how they position themselves in the marketplace. Obtaining students is hard for institutions and represents a significant area of expertise for most OPM firms. The most common activity is marketing and recruiting, with a common focus on managing initial student leads and advising prospective students on the enrollment process, including accessing financial aid. Instructor and student support can also be a significant focus for OPM firms, especially in cases where faculty are unfamiliar with asynchronous strategies or institutional staffing levels are insufficient to provide the necessary student support. OPM firms typically engage in the instruction role by attending to course development and construction of the technological interface students will use. OPM firms may also design assessment instruments and provide production support for online faculty lectures. In some cases, institutions can adopt turn-key online programs that are essentially ready to use with just university branding added.

In sum, institutions can sign OPM agreements for a variety of tasks, depending on internal capacity for supporting online programs, and the capacity of the OPM for providing a service. It is important to note that OPM firms are not brought in casually to fulfill a narrow function. Instead, the OPM firm is integrated into the provision of online programs and is vital to their success.

OUTSOURCING TO OPM FIRMS

Institutions might consider outsourcing the management of online programs to OPMs for several potential reasons. Institutions may not have the resources, or sometimes the desire, to invest in developing the capacity for online programs in house. And because institutions often have limited expertise in online education, OPM firms can provide the money, people and knowledge that is necessary to successfully launch or expand a program. They may also be looking for a quick way to enter or expand their online education footprint and access new markets. Rapid change can be difficult in a university, and OPM firms provide the leverage to establish programs when resistance or bureaucracy gets in the way. Financial reasons are also important. OPM firms can lower the cost of production because they have already established the structures and processes necessary to get the job done. OPM-provided up-front capital to build out the program relieves institutions of less attractive forms of financing for cash-strapped institutions. And OPM firms can reduce the risk of financial losses to the institution both by using prior experience to avoid unforced errors in program design and back-loading their profits to later years after recouping its investment.

Each reason can be paired with a concern that suggests an institution would be wise to think again about outsourcing online program management. By outsourcing the expertise to build out online programs, institutions may sacrifice building internal capacity to create future programs without the OPM firm. Using an OPM firm to break through campus barriers to facilitate rapid change may result in limited buy-in from stakeholders. Financial incentives for this type of outsourcing create concerns with maintaining academic autonomy, faculty ownership, and obligations to sustain long-term financial commitments to a third party.

In a simplified assessment, whether or not an institution should outsource their online programs comes down to assessing the trade-off between convenience and control. In-house production requires the institution to divert attention from other activities to recruit new personnel and develop new processes and functions. At an institution with little existing capacity, that work can feel daunting. An OPM that provides

expertise and established implementation processes and functions can make life much easier for administrators. Yet, many day-to-day operations will be controlled by the OPM firm. Moreover, contractual terms can limit the organization's independence in completing its own share of the work in adjusting key features (e.g., curriculum, price) of the program. The challenge of maintaining control of an outsourced program takes considerable effort, making the simple solution of outsourcing more complicated in practice.

OPM FIRMS

There are various lists of OPM firms. The lists generally include between 26 and 35 companies operating in this space. The blog, *Phil on Ed Tech*, regularly updates a list of prominent firms and provides analysis of changing dynamics within the OPM industry. From this list, the OPM firms with the largest number of university partnerships include Pearson Online Learning Solutions, Wiley Education Services, 2U, and Academic Partnerships. Pearson and Wiley are publishing companies with longstanding ties to education. They represent an evolution of publishing from providing textbooks, to teaching aids, to online course support, to course modules and assessments. It is a small step from there to contracting with institutions in an online program manager role. 2U and Academic Partnerships are more recent additions, emerging about 15 years ago to provide OPM services to institutions of higher education. The other OPM firms have a variety of origins, from MOOCs and instructional design companies, to enrollment management and IT training. Many firms also have ties to the for-profit higher education industry, whether as direct providers of education that moved into the OPM service provider role or through a prior connection of a founder to for-profit higher education. In any case, all the major OPM firms now operate as for-profit businesses.

Although most OPM firms work with multiple institutions, a few firms (e.g. Zovio, Kaplan Higher Education, Grand Canyon Education) focus their attention on supporting large online enrollments at one institution. These firms entered the OPM industry when they coverted a for-profit university, that they owned, into a new nonprofit university. During this conversion, they divested their online instructional activities into the new university while retaining the portions of the former for-profit university that relate to online program management work. In turn, the new university hired its former owner to provide OPM services.

Overall, OPM firms are mostly new companies, established within the last 20 years. The field is marked by continued consolidation and investor interest. Mergers among OPM firms demonstrate the potential importance of scale in their operations; larger entities may have a competitive advantage by increasing revenue while decreasing marginal costs. The ongoing interest from investors and venture capitalists likewise suggest online program management is seen as a profitable industry with a strong future.

FINANCIAL MODELS

OPM services are financed in one of two ways. First, the fee-for-service model pays the OPM firm a flat fee in exchange for services rendered. For example, an institution may contract with an OPM firm to do market analysis and design an online program in response to that analysis. A fixed payment would be made on a set schedule or upon receipt of the deliverables. Another example would be paying the OPM firm to provide ongoing instructional design and faculty training to support curriculum delivery of an online program. In both cases, services are rendered and the institution pays a set fee for those services. A second model, tuition-share, links payment to future revenue from enrollment. The OPM firm covers start-up costs and risk in designing and marketing the program. Once students start enrolling, the OPM firm earns a percentage of the tuition revenue. That share can be quite substantial, over 50% of tuition revenue in some cases.

The tuition-share agreement comes with its own trade-off between covering upfront costs and retaining future revenue. A tuition-share agreement is like an equity investment in the online program. If the program doesn't hit enrollment targets later, the investor (i.e., OPM firm) absorbs much of the loss. The main downside for the institution is that it has to forego a substantial share of future tuition revenue generated by the program. The contract also provides an incentive for the OPM firm to open the program and increase enrollment as quickly as possible. This may look good to an institution looking for new revenue streams, but it also increases the possibility that the OPM interest in growth will conflict with the long-term stability and quality of the academic program. Still, the idea of capturing a new market and generating future revenue is enticing enough for many institutions that they have chosen to outsource their programs to an OPM firm.

Given that the tuition-share agreement is designed to address the financial constraints of starting an online program, it might be the case that renewal of an OPM contract would prioritize a fee-for-service model or reduce the tuition share percentage. It is not clear, however, that this happens in practice. Without a better system for identifying and tracking OPM contractual terms, we simply do not know how universities and OPM firms might approach a renewal of the outsourcing arrangement. Significant costs are possible, however, if a university wants to end a contract with an OPM firm. For example, there would be costs associated with the logistical effort of changing program support structures without disrupting students' academic progress. Universities may also have financial obligations to the OPM firm, such as compensation for the use of proprietary services or technologies that the program is built on and supported with. The more difficult it is to continue offering the program without the OPM firm, the more leverage the firm has when negotiating renewal terms.

WHY REGULATE OPM OUTSOURCING

Online program management outsourcing is largely an unregulated phenomenon. It is either ignored or exempted from most existing policies that govern how higher education institutions may operate. Accreditation reviews and self-studies typically do not evaluate OPM contracts. The federal government does not distinguish OPM outsourcing from any other contract an institution may have with a third-party. States have limited capacity to provide oversight for the range of OPM contracts and services that exist.

Supporters of OPM outsourcing might say taking a laissez-faire approach to regulation is appropriate. Innovations can be stifled by heavy-handed regulators, and arguably universities themselves are in the best position to determine how to deliver their curriculum. Likewise, other forms of outsourcing exist. Why should we hold OPM outsourcing to a different standard? Six potential issues emerge that suggest the importance of

regulating OPM outsourcing. These are not slam-dunk reasons, however, and several rely on assumptions and value judgments that may not hold up under scrutiny. We articulate them here to provide a sense of the skepticism around OPM outsourcing, not as inherently valid justification for further regulations.

6 REASONS TO REGULATE OPM OUTSOURCING

1. Involves the indirect use of Title IV funds
2. Involves core university activities of teaching, learning, and credentia
3. The legitimacy of online programs in higher education
4. For-profit education
5. The extent of control the university maintains over its outsourced online programs
6. Whether the current regulatory environment is structured to adapt to how institutions of higher education actually operate

First, OPM outsourcing involves the indirect use of Title IV funds. Much of the regulatory apparatus for higher education is directed to ensure the appropriate use of these funds. The federal government should have an interest in cases when Title IV funds are used to support contracts with non-Title IV eligible entities. Other forms of outsourcing, however, also access Title IV funds, such as contracts for student housing or food service. It is difficult to clear a path for regulating OPM outsourcing based on protecting Title IV funds that doesn't also sweep up a range of other activities common in higher education.

OPM outsourcing also involves core activities of teaching, learning, and credentialing. If these are outsourced, it removes the soul of the university and diminishes the entire enterprise. Like the use of Title IV funding, though, there are numerous examples of outsourcing instruction in higher education. In fact, current policy explicitly allows outsourcing for up to 25% of a program, and up to 50% with approval from an accreditation agency. The issue isn't whether outsourcing of core activities is permissible; it clearly is. Rather, it is how much can be outsourced and does OPM outsourcing fit under this acceptable model.

A third issue is the legitimacy of online programs in higher education in general. Despite the widespread engagement with technology as a mechanism for the delivery of courses and programs, there is still a remarkably persistent skepticism that distance education can be equal to residential instruction. The concern with OPM outsourcing seems specific to the fact that it is online. There are examples of outsourcing in residential models as well as with some executive programs and education abroad. These have not raised the level of concern as outsourcing of online programs. Regulations do make a distinction between the two modes of instruction, and as the COVID pandemic has emphasized, in-person learning enjoys a privileged status on virtually all campuses.

Combined with online education is the fraught topic of for-profit higher education. Even more than online education, explicitly seeking profit in academic programs is deeply problematic to many stakeholders. Federal law and policy enforce a distinction between for-profit and nonprofit education at the institutional level. OPM outsourcing is an example where this distinction may be

ineffective at the program level. In addition, there can be disagreement between regulatory entities as to whether an institution is actually nonprofit or not[3]. Policy has yet to definitively weigh in on the dividing line between for-profit and nonprofit in the context of OPM outsourcing.

A fifth issue that emerges with OPM outsourcing is the extent of control the university maintains over its outsourced online programs. Control is a central tenant of accreditation and guides policies that assume a hierarchical governance structure overseeing all operations conducted in an institution's name. Outsourcing online programs to an OPM firm moves at least some control to a third-party. Assertions that the university retains final approval and the faculty have ultimate authority may be questionable in cases where changing OPM services is difficult or proprietary technology is fundamental to the program.

Finally, a much more fundamental argument is whether the current regulatory environment is structured to adapt to how institutions of higher education actually operate. The Triad was established in the last century when the forms and functions of higher education were quite a bit different than they are today. When higher education changes, policies should adapt. There is no benefit to enforcing the status quo when underlying conditions have changed. To wit, the Triad needs to establish new policies to reflect the current reality of OPM outsourcing.

POSSIBLE REGULATORY MODIFICATIONS

OPM firms and services have emerged and expanded more quickly than the reactions of policy-makers. A few efforts have been made to address gaps in the policy environment for OPM outsourcing, but actual changes have been limited. It is possible, however, for a relatively minor shift in regulatory language to make a large difference in oversight of OPM outsourcing. Even if the current political environment is not amenable to such changes, a motivated future administration could modify enforcement guidelines or expand the scope of existing policies to include the OPM market. For example, the language regarding "incentive compensation" sat unheralded in the Higher Education Act for decades until the Obama Administration dusted it off as a mechanism for regulating for-profit higher education. Similar landmines may exist relevant to OPM outsourcing. Here are five examples where the framework is in place; the only thing lacking is the inclusion of OPM outsourcing as a trigger for action.

INCENTIVE COMPENSATION

One of the more frequently noted policies that OPM outsourcing is connected to is the ban on incentive compensation. This rule states educational entities cannot compensate staff based on the number of students they enroll. On the surface, most tuition-share agreements seem to violate this rule by basing revenue generation on enrollment numbers. The "safe harbors" presented in 2011 guidance allows for bundled services, which gives cover to the OPM services by separating recruitment activities from retention. Many of the activities of OPM firms, even when identified as bundled services, are designed to increase enrollment. This includes activities beyond recruitment and includes re-enrollment practices and retention efforts. If it is important to policymakers to limit compensation based on enrollment, then all aspects of enrolling students should be considered. A simple rollback of this guidance would force OPM firms to adjust their practices or move away from tuition share agreements entirely.

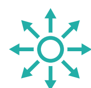
WRITTEN ARRANGEMENTS

"Written arrangements" are documents specific to when one institution provides parts of an educational program in partnership with another entity.

Seemingly similar to what OPM agreements do, current guidance does not define OPM agreements as "written arrangements" (see 34 CFR §668.5). In one of the few direct acknowledgements that OPM outsourcing even exists, the U.S. Department of Education argued that categorizing OPM agreements as written arrangements "could grind the basic functions of an institution to a halt" (Federal Register, 2020, p. 176). The statement came from an assumption that OPM outsourcing was more closely related to a contract with a food service provider than outsourcing parts of an educational program. Yet, the level of involvement and academic related activity performed by OPM firms are similar in scope to other cases when written agreements are required. A new understanding of OPM services as academic program outsourcing would trigger the written arrangement requirement without causing problems in other contracts unrelated to academics.

CONSUMER PROTECTION

One of the requirements for written arrangements is disclosure of the arrangement to students. Even without a written arrangement designation, however, disclosures of OPM agreements could be mandated to avoid claims of misrepresentation or omission of program status to students. OPM firms currently can act in the name of the university, without disclosing that they are a separate entity. There are further questions about whether OPM employees would be considered institutional employees, subjected to the same mandatory reporting, training, and background checks as other employees. Consumer complaint systems in the states currently do not know if the student was engaging with an employee of an OPM firm or the institution. To address these consumer protection issues, a prominent disclosure statement of the OPM relationship could be a condition of Title IV program eligibility. OPM firm employees could be included in mandatory compliance training. States could ensure OPM relationships were identified in order to have more complete system for receiving and addressing student complaints.



PROGRAM OUTSOURCING

Current accreditation and federal policies allow up to 25 percent of a program to be outsourced, and up to 50 percent with the approval of the accreditation agency. Yet many services conducted by OPM firms are not included in this calculation, such as curriculum development, advising, student recruiting, and faculty training. The program being outsourced is only considered to be the part that is direct instruction; that is, where a faculty member is actually teaching students. It seems entirely possible for a school to outsource all aspects of an online program, provided the instructor of record is an employee. A change to this calculation to include more services than just "instruction" would help curtail the perceptions that OPM firms are controlling all aspects of the online program. A report by the Century Foundation (2021)[4] detailed services and associated risk levels with each service that might prove helpful in defining the 50% limit of outsourcing.

SUBSTANTIVE CHANGE REQUESTS

Accreditation agencies all have policies about institutional actions that are substantive changes, and thus require special review. OPM outsourcing, however, does not often trigger a substantive change review. Agency policies do not explicitly mention OPM outsourcing and institutions typically do not identify these contracts in self-studies or other review documents. The lack of review may be partially explained by accreditation agencies focus on learning outcomes more so than inputs, and assumptions that working with an OPM is an input measure. If accreditation agencies required OPM outsourcing to be part of the substantive review it would be part of the public notice process and add some transparency to the OPM phenomenon.

CONCLUSION

OPM outsourcing mostly exists outside of the regulatory framework for higher education in the United States. It has not been previously considered as a distinctive activity requiring specific policies or regulations to guide or limit its activity. As the phenomenon gains traction, more attention on regulating the activity has emerged. Nevertheless, there are as of yet few examples of actual changes to regulations that specifically target this form of outsourcing. It is unclear now whether the urge toward greater oversight eventually results in erecting new guardrails, or if policymakers step aside and explicitly or implicitly endorse the expansion of OPM outsourcing.

Whatever the outcome, policies will need to account for current activities, while anticipating future configurations. Policymakers must recognize the on-the-ground reality of OPM outsourcing. They cannot roll back the clock and assume that the wholesale prevention of OPM outsourcing is a viable policy option. Policymakers must recognize that higher education will continue to adapt and respond to changing student demographics, workforce needs, and available technologies. Instituting tight control over OPM outsourcing now can potentially harm future advancements and limit options for students and institutions alike.

We identified several reasons that OPM outsourcing has been targeted for greater oversight, and some relatively simple steps policymakers could take if they feel action is warranted. We anticipate that some additional regulation is likely, either through federal rule-making, accreditation agency action, or state oversight activities. The biggest issue now, however, is the lack of information about when OPM outsourcing is used and what aspects of the educational program it covers. Better disclosure of the scope and scale of the outsourced online program management would add great value to the formation of future policies.

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ENDNOTES

[1] This brief emerges from work supported by Arnold Ventures. The full report is available here: https://edarxiv.org/py3sz/

[2] Contractual agreements are discussed in regulation as an administrative decision for the processing of Title IV funds and have no academic components to the agreement (U.S. 34 CFR §668.25)

[3] Grand Canyon University is considered a nonprofit by its accreditation agency, the state, and the Internal Revenue Service, but for-profit by the U.S. Department of Education (see McKenzie, 2021).

[4] Though this work was directed at accreditors, the level of detail Dudley, Hall, Acosta, & Laitinen (2021) provide explores the complexities of agreements and areas where more concern for certain services override that of others.