



March 28, 2023

The Honorable Miguel Cardona  
Department of Education  
400 Maryland Ave SW  
Washington, DC 20202

**Re: Dear Colleague Letter on requirements for third-party servicers (TPS)**

Dear Secretary Cardona:

Thank you for soliciting comment on the Department of Education's (ED) new Dear Colleague Letter on requirements for third-party servicers (TPS).

The Alliance for Digital Innovation (ADI) is a nonpartisan alliance of the nation's most cutting-edge technology firms. Our members represent key critical technologies at all levels of the federal government's technology stack, including cloud infrastructure, digital identity, human resources software, quantum computing, digital services, and a range of sophisticated cybersecurity tools and services critical to the United States' national security.

Our mission is to break down barriers for government to bring the technological advancements in commercial innovation to the public sector to build a modern, 21st century digital government.

ADI has significant concerns with the new definition of TPS providers as outlined in the Dear Colleague. The lack of clarity in the Dear Colleague Letter risks significantly increasing the number of organizations considered TPS. By moving modern, cloud-based technology companies into this category, the Department of Education would substantially increase overhead costs for postsecondary institutions and stifle the ability of these institutions to adopt innovative technologies.

Specifically, the expanded definition of TPS risks including many organizations in the scope of TPS requirements despite having tangential or no direct role in the administration of federal student aid programs. As it is currently drafted in the Dear Colleague Letter, the definition of TPS would encompass any organization that "administers, any aspect of an institution's participation in the Title IV programs," including developing curricula, monitoring student engagement, and conducting outreach to students. The broad scope of the definition risks

encompassing both developers of innovative education technology services and general information technology service providers. For example, the definition could encompass enterprise resource management platforms, cloud technology developers, and general database management systems absent additional clarification from the Department. To help mitigate these concerns, we highly recommend that the Department exempt cloud service providers from the definition of TPS given that cloud technologies offer the infrastructure, compute, and data management capabilities on which universities and colleges use to administer their own programs. Including these organizations as TPS would substantially increase the record keeping and other obligations on postsecondary institutions that would tax both their and the Departments' resources.

In addition, we have concerns that the expanded definition—coupled with the restriction on use of foreign-owned TPS—will unintentionally prohibit colleges and universities from adopting best-in-breed technology. Some organizations newly designated as TPS by this guidance have cutting-edge technology and only an indirect or nominal association with Title IV. Prohibiting postsecondary institutions from contracting with these organizations would limit the learning innovations available to students and program administrators.

Finally, we are concerned that the Department did not undergo formal notice-and-comment rulemaking, which prevents the public from effectively offering insights. If the Department proceeds with this new policy, we encourage you to pursue notice-and-comment rulemaking and conduct economic and regulatory impact analyses to better understand the record keeping and other obligations, impacts, and burdens that would be placed on postsecondary institutions, technology developers, and the Department.

Thank you for considering our comments. Please let us know if you have any questions or concerns.

Sincerely,

The Alliance for Digital Innovation