

Congress of the United States
Washington, DC 20515

October 1, 2025

Mr. David Felsenthal
Chief Executive Officer
EAB
2445 M Street NW
Washington, DC 20037

Dear Mr. Felsenthal:

The U.S. House and Senate Committees on the Judiciary are conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ Among other topics, the Committees are examining whether enrollment management software (EMS) and nonpublic algorithms used for admissions and financial aid give colleges the ability to engage in algorithmic collusion.² We are particularly concerned that colleges may be using EMS or other algorithms to maximize their profits or coordinate their pricing, financial aid, and admissions practices.³ Accordingly, to inform the Committees' oversight and potential legislative reforms, we write to request information related to the products and services that your organization offers to institutions of higher education.

EMS products and services aggregate and analyze purchased data about hundreds of thousands of students who have taken the ACT or SAT to make recommendations to colleges about price and enrollment.⁴ Companies selling EMS services to colleges and universities help schools "extract one more dollar from one last family each and every spring" by taking part in what these companies called "financial aid leveraging."⁵ EMS companies later rebranded to the term "financial aid optimization" to distance themselves from their image "as a crowbar to wedge themselves into teenagers' brains and parents' pocketbooks . . ."⁶ These products and services can be used to target prospective students from wealthy zip codes; calculate financial aid packages that maximize colleges' revenue; and meet colleges' enrollment goals such as boosting application rates, limiting class sizes, and maximizing enrollment yield.⁷

¹ See, e.g., Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Christina Paxson, President, Brown Univ. (Apr. 8, 2025); *The Elite Universities Cartel: A History of Anticompetitive Collusion Inflating the Cost of Higher Education Before the Subcomm. on the Admin. State, Regul. Reform, & Antitrust of the H. Comm. on the Judiciary*, 119th Cong. (2025).

² See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Christina Paxson, President, Brown Univ. 4 (Apr. 8, 2025).

³ See *id.*; see also Ron Lieber, *Colleges Know How Much You're Willing to Pay. Here's How.*, N.Y. TIMES (May 1, 2025).

⁴ See Lieber, *supra* note 333.

⁵ *Id.*

⁶ *Id.*

⁷ See *id.*; see also, e.g., *Practices*, HUM. CAP. RSCH. CORP. (last visited Sep. 25, 2025).

Section 1 of the Sherman Act makes certain agreements among competitors illegal, such as agreements to limit competition on price, output, or quality of products and services.⁸ An agreement may violate the Sherman Act even if it resulted from competitors not directly communicating about pricing, including through the coordinated use of algorithms.⁹ For example, colleges that agree to use a common pricing formula or algorithm, or knowingly do so through a third-party company, are likely violating the antitrust laws.¹⁰

Competing universities using an EMS program or other algorithms to provide admission, pricing, or scholarship package recommendations based on competitors' nonpublic data may violate antitrust law.¹¹ Although the competitors are not discussing their pricing or admission practices with each other, they are delegating their decision making to a software or algorithm that is "facilitat[ing] the exchange of confidential business information" or coordinating decision making or agreements.¹² As former Acting Chairman of the U.S. Federal Trade Commission Maureen K. Ohlhausen explained, it is unlawful for a person "to collect confidential price strategy information from all the participants in a market and then tell everybody how they should price," so an algorithm may not do so either.¹³

Accordingly, to advance the Committees' oversight of institutions of higher education, please provide as soon as possible but not later than 5:00 p.m. EST on October 15, 2025, a list of each product or service that your organization offers to undergraduate institutions of higher education. For each product and service:

⁸ See 15 U.S.C. § 1; *Nat'l Soc'y of Pro. Eng'rs v. United States*, 435 U.S. 679, 692, 695 (1978); *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 109 (1984).

⁹ See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 222–23 (1940).

¹⁰ *Id.* at 222; see also Doha Mekki, Principal Deputy Assistant Att'y Gen., U.S. Dep't of Just., Remarks at GCR Live: Law Leaders Global 2023 (Feb. 2, 2023) ("Where competitors adopt the same pricing algorithms, our concern is only heightened. Several studies have shown that these algorithms can lead to tacit or express collusion in the marketplace, potentially resulting in higher prices, or at a minimum, a softening of competition.").

¹¹ See *Duffy v. Yardi Sys., Inc.*, 758 F. Supp. 3d 1283, 1292–94 (W.D. Wash. 2024) (finding that competitors using a software intermediary "to compile their commercially sensitive data" and calculate pricing may violate Section 1 of the Sherman Act); *id.* at 1293 ("A group of competitors subcontracting their pricing decisions to a common, outside agent that provides algorithmic pricing services amounts to a hub-and-spoke conspiracy.") (citation modified); *United States v. Union Pac. R.R. Co.*, 226 U.S. 61, 85–86 (1912) (explaining that the Sherman Act "embraces all forms of [contract or] combination, old and new"); *In re RealPage, Inc., Rental Software Antitrust Litig. (No. II)*, 709 F. Supp. 3d 478, 510 (M.D. Tenn. 2023) (finding "persuasive evidence of horizontal agreement" where each competitor provided to a software company "its proprietary commercial data, knowing that [the software] would require the same from its horizontal competitors and use all of that data to recommend . . . prices to its competitors").

¹² Maureen K. Ohlhausen, Acting Chairman, U.S. Fed. Trade Comm'n, *Should We Fear the Things That Can Go Beep in the Night? Some Initial Thoughts on the Intersection of Antitrust Law and Algorithmic Pricing* 10 (May 23, 2017); see also *United States v. Masonite Corp.*, 316 U.S. 265, 276 (1942) ("The fixing of prices by one member of a group pursuant to express delegation, acquiescence, or understanding is just as illegal as the fixing of prices by direct, joint action."); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 654–56 (7th Cir. 2002) (describing agreements and contracts "made without any actual communication among parties to the agreement").

¹³ Ohlhausen, *supra* note 12, at 10.

1. Describe how each product and service operates and its full capabilities, including what types of recommendations it can make for users;
2. Identify whether each product and service utilizes any algorithm for student recruitment, enrollment optimization, pricing, financial aid, or admissions purposes and identify the purpose of the algorithm, the entities or individuals that create the algorithm, and the data with which each algorithm is trained;
3. Identify whether each product and service utilizes applicant data, including but not limited to income or other financial information, to assist undergraduate institutions with student recruitment, enrollment optimization, pricing, financial aid, or admissions; and
4. List each institution of higher education that utilizes each product or service.

Pursuant to Rule X of the Rules of the House of Representatives and Rule XXV of the Rules of the Senate, the Committees are authorized to conduct oversight of and legislate on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”¹⁴ If you have any questions about this request, please contact Committee staff at (202) 225-6906 and (202) 224-5225. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives



Scott Fitzgerald
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust
U.S. House of Representatives



Charles Grassley
Chairman
Committee on the Judiciary
U.S. Senate



Mike Lee
Chairman
Subcommittee on Antitrust,
Competition Policy, and
Consumer Rights
U.S. Senate

¹⁴ Rules of the House of Representatives, 119th Cong., R. X (2025); Rules of the Senate, 119th Cong., R. XXV. (2025).

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cc: The Honorable Jamie Raskin, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

The Honorable Richard Durbin, Ranking Member, Committee on the Judiciary, U.S. Senate

The Honorable Jerrold Nadler, Ranking Member, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, U.S. House of Representatives

The Honorable Cory Booker, Ranking Member, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, U.S. Senate