

2U, Inc.  
Form S-8  
December 08, 2017

As filed with the Securities and Exchange Commission on December 8, 2017

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**2U, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of Incorporation or  
organization)

**26-2335939**  
(I.R.S. Employer Identification No.)

**7900 Harkins Road  
Lanham, Maryland 20706**

(Address of principal executive offices) (Zip code)

**Amended and Restated 2017 Employee Stock Purchase Plan**

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(Full title of the plan)

**Christopher J. Paucek**

**Chief Executive Officer**

**2U, Inc.**

**7900 Harkins Road  
Lanham, Maryland 20706**

**(301) 892-4350**

(Name and address of agent for service) (Telephone number, including area code, of agent for service)

**Copies to:**

**Andrea L. Nicolas**

**Erica Schohn**

Skadden, Arps, Slate, Meagher & Flom LLP

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**Matthew Norden**

Co-General Counsel, Corporate & Securities

2U, Inc.

7900 Harkins Road

Lanham, Maryland 20706

Telephone: (301) 892-4350

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  X

Non-accelerated filer  O (Do not check if a smaller reporting company)

Accelerated filer  O

Smaller reporting company  O

Emerging growth company  O

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.  O

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price Per Share(2)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
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**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**ITEM 1. PLAN INFORMATION.**

Not required to be filed with this Registration Statement.

**ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.**

Not required to be filed with this Registration Statement.

**PART II**

**ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE**

The following documents filed by 2U, Inc. (the *Registrant*) with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 filed on February 24, 2017.

(b) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2017 filed on May 4, 2017.

(c) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2017 filed on August 7, 2017.

(d) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2017 filed on November 7, 2017.

(e) The Registrant's Current Report(s) filed on Form 8-K filed on May 2, 2017, June 1, 2017, July 3, 2017 (as amended and supplemented by the Form 8-K/A filed on August 7, 2017), September 1, 2017, September 11, 2017 and September 14, 2017.

(f) The description of the Registrant's Common Stock which is contained in the Registrant's Registration Statement on Form 8-A filed on March 25, 2014 (File No. 001-36376) under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), including any amendment or report filed for the purpose of updating such description.

(g) All documents, reports and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**ITEM 4. DESCRIPTION OF SECURITIES**

Not applicable.

**ITEM 5.**

**INTERESTS OF NAMED EXPERTS AND COUNSEL**

Not applicable.

**ITEM 6.**

**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The Registrant is incorporated under the laws of the State of Delaware. Section 102 of the Delaware General Corporation Law, or DGCL, permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

As permitted by the DGCL, the Registrant's amended and restated certificate of incorporation and bylaws provide that: (i) the Registrant is required to indemnify its directors to the fullest extent permitted by the DGCL; (ii) the Registrant may, in its discretion, indemnify its officers, employees and agents as set forth in the DGCL; (iii) the Registrant is required, upon satisfaction of certain conditions, to advance all expenses incurred by its directors in connection with certain legal proceedings; (iv) the rights conferred in the bylaws are not exclusive; and (v) the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents.

The Registrant has entered into agreements with its directors that require the Registrant to indemnify them against expenses, judgments, fines, settlements and other amounts that any such person becomes legally obligated to pay (including with respect to a derivative action) in connection with any proceeding, whether actual or threatened, to which such person may be made a party by reason of the fact that such person is or was a director of the Registrant or any of its affiliates, provided such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the Registrant's best interests. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. At present, no litigation or proceeding is pending that involves any of the Registrant's directors or officers regarding which indemnification is sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification.

The Registrant maintains a directors' and officers' liability insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses the Registrant for those losses for which it has lawfully indemnified the directors and officers. The policy contains various exclusions.

**ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.**

Not applicable.

**ITEM 8. EXHIBITS**

<b>Exhibit Number</b>	<b>Description</b>
3.1(1)	Amended and Restated Certificate of Incorporation, as amended to date and as currently in effect.

- 3.2(2) Amended and Restated Bylaws, as currently in effect.
- 4.1(3) Specimen stock certificate evidencing shares of Common Stock.
- 4.2 Amended and Restated 2017 Employee Stock Purchase Plan.
- 5.1 Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.
- 23.1 Consent of KPMG LLP, independent registered public accounting firm.
- 23.2 Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included on the signature page of this Form S-8).

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(1) Previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-36376), filed with the Commission on April 4, 2014, and incorporated by reference herein.

(2) Previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K (File No. 001-36376), filed with the Commission on April 4, 2014, and incorporated by reference herein.

(3) Previously filed as Exhibit 4.2 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-194079), filed with the Commission on March 17, 2014, and incorporated by reference herein.

**ITEM 9. UNDERTAKINGS**

1. The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however,* that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(d) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a

director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**EXHIBIT INDEX**

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4.2	<u>Amended and Restated 2017 Employee Stock Purchase Plan.</u>
5.1	<u>Opinion of Skadden, Arps, Slate, Meagher &amp; Flom LLP.</u>
21.1(4)	<u>Subsidiaries of the Registrant.</u>
23.1	<u>Consent of KPMG LLP, independent registered public accounting firm.</u>
23.2	<u>Consent of Skadden, Arps, Slate, Meagher &amp; Flom LLP (included in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on the signature page of this Form S-8).</u>

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(4) Previously filed as Exhibit 21.1 to the Registrant's Annual Report on Form 10-K (File No. 001-36376), filed with the Commission on February 24, 2017, and incorporated by reference herein.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Lanham, State of Maryland, on this 8th day of December, 2017.

**2U, INC.**

By:

*/s/ Catherine A. Graham*  
Catherine A. Graham  
*Chief Financial Officer*

**POWER OF ATTORNEY**

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Christopher J. Paucek, Catherine A. Graham, Todd J. Glassman and Matthew Norden, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Christopher J. Paucek Christopher J. Paucek	Chief Executive Officer and Director ( <i>Principal Executive Officer</i> )	December 8, 2017
/s/ Catherine A. Graham Catherine A. Graham	Chief Financial Officer ( <i>Principal Financial Officer</i> )	December 8, 2017
/s/ Andrea Papaconstantopoulos Andrea Papaconstantopoulos	Chief Accounting Officer ( <i>Principal Accounting Officer</i> )	December 8, 2017
/s/ Paul A. Maeder Paul A. Maeder	Director	December 8, 2017
/s/ Mark J. Chernis Mark J. Chernis	Director	December 8, 2017
/s/ Timothy M. Haley Timothy M. Haley	Director	December 8, 2017
/s/ Sallie L. Krawcheck Sallie L. Krawcheck	Director	December 8, 2017
/s/ John M. Larson John M. Larson	Director	December 8, 2017
/s/ Earl Lewis Earl Lewis	Director	December 8, 2017
/s/ Coretha M. Rushing Coretha M. Rushing	Director	December 8, 2017
/s/ Edward S. Macias Edward S. Macias	Director	December 8, 2017
/s/ Robert M. Stavis Robert M. Stavis	Director	December 8, 2017

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/s/ Valerie B. Jarrett  
Valerie B. Jarrett

Director

December 8, 2017