



Background Information and Implications for Campuses: Department of Education Feb. 15 “Dear Colleague Letter” on Third-Party Servicers

Background

- Since 1992, federal laws and regulations have defined a Third-Party Servicer (TPS) as an outside entity with responsibility for the administration of an institution’s student financial aid programs. The regulations and the statute have been long interpreted to apply only to those entities that are specifically involved in the administration, management, and distribution of Title IV program funds.
- A TPS and the institution it contracts with are subject to various federal requirements, including:
 - Both the TPS and the institution are subject to reporting requirements, including notifying the Department of Education (ED) of any changes to TPS relationships within 10 days;
 - both the institution and TPS must agree to be jointly and severally liable for any applicable statutory or regulatory violations; and
 - the TPS must submit annual compliance audits to ED.
- In addition, institutions are prohibited from contracting with a TPS if the servicer (or its subcontractors) is located outside of the United States or is owned or operated by an individual who is not a U.S. citizen, U.S. national, or permanent resident.

Recent Developments

- On Feb. 15, ED issued a Dear Colleague Letter (DCL), “[Requirements and Responsibilities for Third-Party Servicers \(TPS\) and Institutions](#),” which was updated on Feb. 28. The DCL guidance, which takes effect Sept. 1, would drastically expand the definition of a TPS.
- In offering a rationale for the new guidance, the Department states that its review of contracts in this area “confirmed” that most functions performed by outside entities are “intrinsically intertwined” with the institution’s administration of its Title IV programs, and therefore is appropriately subject to TPS requirements. ED also notes its concern with a large and growing industry of online program management companies (OPMs) providing services to transition academic programs into a distance education format and expand enrollment.

DCL's definition of a Third-Party Servicer

- In the DCL, the Department states it is issuing this guidance to clarify that the performance of the following functions subjects an entity to TPS requirements:
 - student recruiting and retention
 - the provision of software products and services involving Title IV administration activities
 - the provision of educational content and instruction

- In addition, the DCL includes a set of tables providing a “non-exhaustive list” of functions and services that, if outsourced by an institution to a third party, would make that party a TPS.

Implications for campuses

- Although the intended target of the guidance appears to be OPMs, the DCL will dramatically increase the number of outside entities who are subject to TPS requirements, even though, in most cases, these entities are not OPMs. Institutions are currently engaged in an effort to review all contracts with outside entities in order to determine whether the entity is a TPS, and then to modify or terminate contracts as necessary to comply with all TPS requirements.
- Examples of entities that would be considered a TPS under the guidance include:
 - a nonprofit organization providing student engagement and retention services or tools to improve student outcomes for at-risk students
 - an institution that provides courses and instruction to another institution as part of an inter-college consortia
 - an online extension campus providing services to another campus of the same university
 - an institution in a state system providing services to other institutions in the system
 - a hospital, clinic, or private medical practice providing clinical experiences for medical and nursing students
 - a local police department helping to compile and analyze campus crime statistics
- Unless the guidance is rescinded or significantly changes, the guidance in the DCL is likely to result in disruptions and, in some cases, terminations of relationships that provide critically important services for students.
- Some outside entities, particularly those working with smaller, lower-resourced institutions, may be unwilling to accept TPS liability, audit, or other responsibilities. This means institutions will need to find new servicers, who may charge more, or who will pass the additional TPS compliance costs back onto the institution.
- The prohibition on foreign organizations or individuals being a TPS is especially problematic, as this would preclude institutions from partnering with foreign institutions to offer exchange or study abroad programs. It would also mean the termination of contracts with foreign recruiters who recruit international students to study in the United States, even though those students are ineligible for Title IV aid. Finally, it will force many institutions to switch from foreign-located to U.S.-located technology providers, which is an expensive and time-consuming exercise. Transitioning to a new learning management system or enterprise resource planning system would be impossible to complete by the Sept. 1 deadline.
- ED has requested public comments on the DCL, with a deadline of March 30, 2023. It is important the Department hears from institutions about the likely negative impact of the current guidance.