

U.S. Department of Education Clarifies Third-Party Servicer Guidance and Announces Delayed Effective Date

April 17, 2023

On April 11th, the U.S. Department of Education **announced** that it will delay the September 1, 2023 effective date of its Dear Colleague Letter (DCL) GEN 23-03 Requirements and Responsibilities of Third Party Servicers and Institutions. The Department also clarified certain activities it does not consider to be third-party servicer relationships covered by the guidance and stated its intentions to remove the provision of the guidance pertaining to foreign ownership of a third-party servicer.

The Department received more than 1,000 public comments in response to its third-party servicer guidance. Cullen and Dykman LLP previously issued two Client Alerts on the guidance, which can be found [here](#) and [here](#).

Pursuant to the announcement, the third-party servicer guidance will not take effect until “at least six months after [the final guidance letter’s] publication to allow institutions and companies to meet any reporting requirements.” Additionally, the Department stated “[d]eadlines for audit and contractual requirements will follow in fiscal years that begin after the effective date for the reporting requirements.”

The Department also offered a list of activities that are not subject to third-party servicer requirements under the guidance, including:

- Study-abroad programs;
- Recruitment of foreign students not eligible for Title IV aid;
- Clinical or externship opportunities that meet requirements under existing regulations because they are closely monitored by qualified personnel at an institution;
- Course-sharing consortia and arrangements between Title IV-eligible institutions to share employees to teach courses or process financial aid;
- Dual or concurrent enrollment programs provided through agreements with high schools and local education agencies, which are exempt because they do not involve students receiving Title IV aid; or
- Local police departments helping to compile and analyze crime statistics, unless they write or file a report on behalf of an institution for compliance purposes.

The Department stated that it will identify other services that fall into this exempt category as it continues to review public comments.

Finally, recognizing that “the number and breadth of servicers with at least some level of foreign ownership has expanded in the context of a changing higher education marketplace where institutions are adopting increasing numbers of technology-based solutions,” the Department announced that the provision in the guidance pertaining to foreign ownership of third-party servicers would be removed. The Department stated it will later consider this issue through the negotiated rulemaking process.

While the Department prepares revisions to the guidance letter, previous guidance letters GEN 12-08, GEN 15-01 and GEN 16-15 (as amended by the Departments March 8, 2017, electronic announcement) remain in effect.

Cullen and Dykman LLP will continue to monitor developments and provide updates when available. If you have any questions on how the proposed guidance may impact your institution, please feel free to contact Dina Vespia at (516) 357-3726 or dvespia@cullenllp.com, Jennifer McLaughlin at (516) 357-3889 or jmclaughlin@cullenllp.com, or Deirdre Mitacek at (516) 296-9136 or dmitacek@cullenllp.com.

Thank you to Ciara Villalona, a Law Clerk pending New York bar admission, who assisted in the preparation of this alert.

Practices

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