

U.S. Department of Education Releases Updated Guidance on Requirements and Responsibilities for Third-Party Servicers and Institutions

February 16, 2023

Yesterday, the U.S. Department of Education released updated [guidance](#) for institutions that contract with third-party servicers (“TPS”) to administer any aspect of the institution’s participation in student assistance programs authorized under Title IV of the Higher Education Act of 1965 (“HEA”). The updated guidance is effective immediately and rescinds and replaces the Department’s guidance provided in Dear Colleague Letters GEN 12-08, GEN 15-01, and GEN 16-15, as modified by electronic announcement on March 8, 2017.

According to the Department’s updated guidance, the HEA “makes clear that agreements to administer ‘any aspect’ of an institution’s participation in the Title IV programs fall within the scope of the Department’s TPS oversight authority.”

A TPS is defined in 34 C.F.R. § 668.2 as “any entity or individual that administers, any aspect of an institution’s participation in the Title IV programs.” Generally, a TPS performs functions or services necessary (1) for the institution to remain eligible to participate in the Title IV programs; (2) to determine a student’s eligibility for Title IV funds; (3) to provide Title IV-eligible educational programs; (4) to account for Title IV funds; (5) to deliver Title IV funds to students; or (6) to perform any other aspect of the administration of Title IV programs or comply with the statutory and regulatory requirements associated with those programs.

Specifically, the Department revised its guidance concerning “the functions of student recruiting and retention, the provision of software products and services involving Title IV administration activities, and the provision of educational content and instruction.” Entities performing the functions of student recruiting and retention, the provision of software products and services involving Title IV administration activities, and the provision of educational content and instruction are considered “third-party servicers” and, as such, institutions that contract with these entities are subject to the Department’s reporting requirements with respect to activities involving these entities. Further, the Department clarified that these entities themselves are subject to annual non-federal audits of the Title IV-relevant functions they perform, if such functions are covered by the audit guide.

The guidance includes a non-exhaustive list of functions and services that, if outsourced by an institution to a third-party, would render that third-party a TPS subject to the Department’s TPS requirements. The guidance states, “In determining whether an entity or individual is subject to the TPS requirements, the Department

focuses on the specific services or functions performed by the entity/individual for the institution, as opposed to the entity's title or a generic description of the types of services provided or functions performed." The guidance also includes an extensive Q&A section on TPS contracts, TPS responsibilities in safeguarding student information, the TPS Data Form, and TPS audits.

Institutions have until May 1, 2023 to report any arrangements with third-party servicers that have not been reported to the Department. Entities or individuals that meet the definition of a TPS are also required to submit the Third-Party Servicer Data Form to the Department or update their existing form no later than May 1, 2023.

Ultimately, the Department makes clear that "[r]egardless of whether an entity is considered a TPS for Title IV purposes, the institution has a fiduciary responsibility to ensure that any contracts, policies, procedures, products, or systems used by the institution, or its contractors/providers are compliant with applicable laws and regulations."

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions about the impact of this updated guidance on your institution, please contact Dina Vespia (dvespia@cullenllp.com) at (516) 357-3726, Jennifer McLaughlin (jmclaughlin@cullenllp.com) at (516) 357-3889, or Deirdre Mitacek (dmitacek@cullenllp.com) at (516) 296-9136.

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

Practices

- Higher Education

Attorneys

- Dina L. Vespia
- Jennifer A. McLaughlin
- Deirdre M. Mitacek
- Ciara Villalona-Lockhart