

2/28/23 – Department of ED Extends Deadlines!

Effective Date of Guidance and Reporting Deadline Now: September 1, 2023

Public Comment Period Deadline Now: March 29, 2023.

Third-Party Servicers (TPS)

Overview

When an institution contracts with an entity for the purpose of outsourcing functions to administer any aspect of Title IV financial aid programs, the U.S. Department of Education through Federal regulation imposes requirements on this entity and the contract created. The entity is defined in Federal regulation as a Third-Party Servicer (TPS). The terms, conditions, oversight, and reporting on the TPS are governed by Federal regulation [34 CFR 668.25](#).

The institution and TPS are jointly and severally liable for any violation by the TPS of any statutory or regulatory provision under the authority of statutes applicable to Title IV of the HEA.

The U.S. Department of Education released [updated guidance](#) intended to clarify the functions provided by a TPS which would bring the entity and contract under the regulatory oversight of the Department.

Third-Party Servicer (TPS) - [34 CFR 668.2](#) Definition (primary elements bulleted and summarized for clarity)

- An individual or a State, or a private, profit or nonprofit organization that
- Enters into a contract with an eligible institution.
- To administer, through either manual or automated processing,
- Any aspect of the institution's participation in any Title IV, HEA program.
- A non-exhaustive list is provided of applicable functions to process eligibility of the student, programs, and the institution as well as deliver funds and any other aspect of the administration of Title IV programs.
- An employee of an institution as defined in the regulation, is not a third-party servicer.

Examples of Third-Party Servicer Functions from 2017 Department of ED Guidance:

- Providing financial aid staffing and/or Title IV processing and management support.
- Determining student and institutional eligibility.
- Preparing/submitted required applications or reports.
- Performing interactive financial aid counseling in person, over the phone, and/or by electronic means.
- Preparing required consumer information disclosures.

Expansion through New 2023 Department of Ed Guidance:

- Software products and services involving Title IV administration activities.
- Provision of educational content and instruction.
- Prohibition of servicers located outside of the U.S. or owned/operated by individual that is not a U.S. citizen or national or lawful permanent resident.

Note: The information and analysis in this document are our best understanding and should not be considered to be or used as legal advice. Legal questions should be directed to legal counsel.

Purpose and Authority of Executive Agency Guidance (U.S. Department of Education)

- Agencies may clarify existing obligations through non-binding guidance documents, which the APA exempts from the notice-and-comment requirements of the federal regulatory process.
- Contents of guidance do not have the force and effect of law and are not meant to bind the public.

2023 Third-Party Servicer Guidance to Do List:

- Read [Ed Department Shakes Up OPMs and Third-Party Servicers: This Is Huge](#); WCET Frontiers; 2/22/2023.
- Review the [2/24/2023 NASFAA Podcast](#) – indicating that the guidance is broad and appears to attempt to regulate through guidance without following the federal rulemaking process.
- Review institution contracted services for applicability to [New Department Guidance](#).
- Report any individual or entity, not previously reported, with which it contracts that meets the TPS criteria from new guidance using the [Department's E-App process](#) no later than **September 1, 2023**.
- Direct contractors to submit the [Third-Party Servicer Data Form](#) to the Department or update their existing form no later than **September 1, 2023**.
- Provide written public comment, regarding the third-party servicer guidance. Deadline **March 29, 2023**. Submit comments via the Federal eRulemaking Portal at [Regulations.gov](#), under Docket ID ED-2022-OPE-0103.
- Review the [February 23, 2023, letter to the U.S. Department of Education](#) provided by the American Council on Education (ACE) co-signed by AAC&U, AACU, AASCU, APLU, Educause, some regional accreditors, UPCEA, and others. The letter requests that the Department extend both the period for public comment and the reporting deadline by a minimum of 30 days.

Note: An official comment should come from institutional or organization leadership. Anyone may comment and give their opinion, you just have to be careful to state that you are providing your personal response and not an official one on behalf of where you work.

Questions

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This document and the *Commenting on Department of Education's OPM Questions* document were created by WCET (the WICHE Cooperative for Educational Technologies) and SAN (the State Authorization Network) for the exclusive use of their members.

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