Cooley

Third-Party Servicer Guidance on Hold

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On April 11, 2023, the US Department of Education (ED) announced that it will modify and further delay the implementation of its controversial guidance on third-party servicer (TPS) issues.

This latest update comes in the form of a blog post by ED Under Secretary James Kvaal and may be the first time ED has issued substantive guidance via blog. The "sub-sub-regulatory" post further revises and delays ED's hastily issued Dear Colleague Letter (DCL) from February 15, 2023, which itself was corrected and delayed once already. Cooley previously summarized the first TPS announcement in a blog post, as well as its update.

We've summarized the key updates from the ED blog post below.

Effective date delayed

ED's February DCL drastically expanded the department's regulatory oversight over third-party entities that partner with institutions participating in federal student aid programs – with ED initially announcing that those changes would be immediately effective. Following prompt backlash and confusion over the scope of the changes, ED delayed the effective date to September 1, 2023, so it could review public comments and questions.

ED's April 11 blog notes the department has received more than 1,000 comments on the proposal and needs additional time to review and consider whether any revisions to the guidance are necessary. It therefore eliminates the September 1 deadline for implementation and instead announces that any new guidance will become effective six months after it is published in the future.

Clarifications on covered services

ED indicates that certain activities generated hundreds of comments, but it does not believe these services are covered by the TPS rules. The department also notes that it will update this list as it reviews comments.

Services **not covered by the TPS rules** include the following:

- 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.
- 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.?

Eliminating foreign ownership restriction (for now)

ED's February DCL, like many previous iterations of TPS guidance, prohibited institutions from contracting with TPS providers with foreign ownership. ED states in the blog post that, based on comments it received – and the fact that a significant number of providers have foreign ownership – it will eliminate this restriction for now, although it will potentially revisit it as a negotiated rulemaking topic.

Next steps

While next steps are unclear and could include a new DCL, ED has indicated that it will include TPS-related issues as part of its upcoming negotiated rulemaking, which will unfold over the next few months. Notably, when ED held public hearings in mid-April to solicit comments on potential topics for the rulemaking, a majority of the comments addressed

TPS issues and the need for them to be included in rulemaking.

We will continue to track the TPS saga and will provide updates as they become available.

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