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U.S. Department of Education Issues Dear Colleague Letter on May 16, 2023 to Update Earlier Guidance on Third-Party Servicers

On Feb. 15, 2023, the U.S. Department of Education (Department) surprised the higher education community with a [Dear Colleague Letter](#) (DCL GEN-23-03) that sets forth new guidance on third-party servicers with whom institutions of higher education (IHE) contract to help administer student assistance programs under Title IV of the Higher Education Act of 1965, as amended (Title IV). The Department requires IHEs to report contracts with third-party servicers and imposes certain requirements not only upon IHEs, but also upon the third-party vendors. For a list of those requirements, [click here](#).

The updated list of those that the Department considers to be third-party servicers was greatly expanded under DCL GEN-23-03, and the Department gave IHEs only to May 1, 2023 to come into compliance. Within a few weeks of issuing this new guidance, the Department extended the deadline to comply to Sept. 1, 2023 and also extended the opportunity to comment to March 30, 2023. On May 16, 2023, the Department issued another [Dear Colleague Letter](#) (DCL GEN-23-08) which rescinds the Sept. 1, 2023 compliance deadline and advises that a new date for compliance will be at least six months from when the Department issues a final revised Dear Colleague Letter on third-party servicers. Deadlines for audit and contractual requirements will follow, starting with the IHE's first fiscal year that begins after the effective date for reporting requirements.

The Department's action to roll back compliance came after it received over 1,000 comments to its DCL GEN-23-03, which not only expanded the list of functions covered by third-party servicer rules but also highlighted the prohibition of IHEs contracting with foreign-owned entities established under a prior [Dear Colleague Letter](#) (DCL GEN-16-15). Citing concerns about clarity of foreign ownership, the Department rescinded any language of the prohibition in DCL GEN-23-03 and DCL GEN-16-15. It also rescinded the foreign contracting prohibition found in the March 8, 2017 [Electronic Announcement Updated Third-Party Servicer Questions and Answers](#). Consequently, there is no current prohibition on IHEs contracting with foreign entities, though the Department advises that oversight in this area may be addressed in the future through negotiated rulemaking.

In addition to issuing DCL GEN-23-08, the Department [posted a blog](#) on April 11, 2023 to address concerns raised with respect to DCL GEN-23-03, which appeared to bring into the third-party servicer realm activities not traditionally viewed as such. Therefore, the Department clarified that the following are not considered third-party servicer relationships:

- 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; and
- 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.

Although updated guidance on third-party servicers is now delayed, IHEs are encouraged to review their relationships with third-party vendors in light of DCL GEN-23-03 as revised by DCL GEN 23-08 and as clarified by the Department's April 11, 2023 blog referenced above. This will allow institutions not only to identify quickly those contracts that will most likely be considered third-party servicer agreements under updated guidance but will also afford adequate opportunity for institutions to discuss applicable contract requirements with their third-party vendors.

If you have any questions about the recent DCLs on Third-Party Servicers, please contact [Sandra Casey](#), any attorney in Bond's [higher education practice](#) or the attorney at the firm with whom you regularly work.

