



SARA SPE Meeting: 2023 Federal Regulations & Guidance Online Program Managers, Third-Party Servicers, & Professional Licensure

Online Program Managers

In mid-February 2023, the U.S. Department of Education announced that it was [seeking comments about Online Program Management \(OPM\)](#) providers and, specifically, the ways in which they are reimbursed for their services. Additionally, the Department announced an intention to establish another rulemaking. One of the topics targeted for negotiated rulemaking (a process to create or refine regulations) in 2023 is “third party services and related issues,” such as OPMs.

Key Points to Know:

- “OPM” is used as an all-encompassing moniker for companies providing online education support services.
- While there are several OPM service models, there are two main financial models:
 - “Revenue sharing” - tuition income shared or fees based upon the number of students.
 - “Fee for service” model - payments are based on a flat fee for providing the service.
- [Senate](#), [House](#), [Government Accounting Office](#), and [consumer groups](#) all have called for changes in or stronger regulation of OPMs. The Department has heard these concerns about OPM providers in the past few years.
- Typically, “incentive compensation” (fees tied to students recruited) is not allowed for Title IV financial aid purposes. In 2011, the U.S. Department of Education [issued a “Dear Colleague letter”](#) providing an exception for “bundled services.” OPMs have used that exemption in ways not fully anticipated in the 2011 guidance.

Why is this an issue:

- Concern regarding “incentive compensation” in which an OPM receives a percentage of the tuition or otherwise benefits based upon the number of students successfully recruited.
- Worry that the emphasis is monetary gain and not on student well-being.
- Additional concerns include:
 - Large share of the tuition revenue that goes to the providers and not institutions,
 - Aggressive recruiting of students,
 - Price students pay is increased, and
 - Institutional lack of control over the program offered.
- Similar companies use “fee for service” model - flat price is paid regardless of the number of students recruited.

Third-Party Servicers

Simultaneously with the Department's request for OPM comments, a [new Dear Colleague Letter](#) (DCL) was released to update guidance on the parameters for Third-Party Servicers (TPS) as found in Federal statute: [20 U.S.C. 1088](#) and further described in Federal regulation [34 CFR 668.2](#). The TPS definition originally targeted a small set of financial aid related services. The guidance seemed to greatly expand the services subject to the rules to those found throughout an institution. The guidance resulted in thousands of negative comments.

In May 2023, the Department rescinded the February guidance ([Update to Third-Party Servicer Guidance](#)) and [DCL GEN 16-15](#) addressing contracts between colleges and foreign-owned or operated servicers. A final revised DCL on Third-Party Servicers is expected “soon” with an effective date at least 6 months after its publication. Third-Party Servicers is expected to be a topic of a 2023-2024 negotiated rulemaking.

The U.S. Department of Education through Federal regulations imposes requirements on any TPS entity and the contract created. 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 (financial aid rules) of the HEA.

Federal regulations:

- Definition of TPS [34 CFR 668.2](#): *“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 is not a third-party servicer.
- The terms, conditions, oversight, and reporting on the TPS are governed by Federal regulation [34 CFR 668.25](#).

What happened to the guidance:

- The winter 2023 guidance vastly expanded the definition of a TPS to include many more providers.
- More than 1,000 public comments were submitted expressing concerns, questions, and Department overreach created by the updated guidance. The 2023 guidance is now on hold.

Professional Licensure

U.S. Department of Education

- Current regulations: [34 CFR 668.43\(a\)\(5\)\(v\) and \(c\)](#), effective July 1, 2020, require public and direct notifications about the curriculum meeting state educational requirements.
- Current regulation: [34 CFR 668.236\(g\)](#), effective July 1, 2023, an eligible prison education program leading to a license must satisfy any applicable education requirements for professional licensure or certification..... in the State in which the correctional facility is located or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release as determined by the institution not less than annually based on information provided by the oversight entity.
- Current regulation: [34 CFR 668.43\(a\)\(5\)\(vi\)](#), effective July 1, 2023, for a prison education program, as defined in 34 CFR 668.236, notifications about State or Federal prohibitions for licensure or employment of formerly incarcerated individuals in any other State for which the institution has made a determination about State prohibitions.
- Proposed regulations: 34 CFR 668.14(b)(32)(ii) & 34 CFR 668.43(a)(5)(v) institution must determine that it satisfies educational prerequisites for a license where the student is located at time of initial enrollment. Revised public notifications: list of all states the institution “is aware” the program meets or does not meet requirements.

U.S Department of Veterans Affairs

- Current regulation: [38 CFR 21.4253\(d\)\(9\)](#), effective February 17, 2023. For the State Approving Agency (SAA) to approve a course to receive Veterans Benefits it must meet certain criteria. For licensure programs, the course must meet all instructional curriculum licensure or certification requirements of such State.
- Current regulation: [34 CFR 21.4259\(e\)](#), effective February 17, 2023. The SAA may disapprove a licensing and certification program if the institution fails to publicly disclose in a prominent manner any conditions or additional requirements, including training, experience, or examinations required to obtain the license, certification, or approval for which the program of education is designed to provide preparation.

