

# Title IV Third-Party Servicers

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U.S. Department of Education

## Agenda

- Definition of a Third-Party Servicer
- Examples and Exclusions
- Contract Requirements and Prohibitions
- Reporting Requirements
- Safeguarding Student Information
- Compliance Audit Requirements
- Standards of Administrative Capability
- Fines, Liabilities, Limitations, Suspensions, and Termination Proceedings

## Definition of Third-Party Servicer

A third-party servicer is an individual, or a state, or a private, profit or non-profit organization that enters into a contract with an eligible institution to administer, through manual or automated processing, **any** aspect of the institution's participation in any Title IV, HEA program.



## Definition of Third-Party Servicer (continued)



What does this mean?

## Definition of Third-Party Servicer (continued)

An entity or individual that is not an employee of the institution that performs services and/or functions necessary:

- For the institution to remain eligible to participate in the Title IV programs
- To determine a student's eligibility for Title IV funds
- To account for Title IV funds
- To deliver Title IV funds to students, or
- To perform any other aspect of the administration of the Title IV programs regardless of whether the servicer is compensated for the functions or services performed on behalf of the institution.

## Third-Party Servicer Examples



What are some examples of Title IV functions or services performed by a third-party servicer?

## Third-Party Servicer Examples (continued)

Examples include, but are not limited to:

- Providing financial aid staffing and/or Title IV processing support
- Providing financial aid management support
- Accessing Department systems and/or information downloaded from a Department system to perform any Title IV function or service on behalf of an eligible institution
- Determining student eligibility and related activities
- Preparing/submitting required applications or reports
- Performing interactive financial aid counseling in person, over the phone, and/or by electronic means
- Preparing required consumer information disclosures



**INCLUDED**

## Third-Party Servicer Examples (continued)

- Performing default prevention/aversion activities
- Cash management functions
- Perkins Loan Servicing or Collection
- Collecting, reviewing, and/or maintaining supporting documentation necessary in person by mail, or by electronic means to determine or support student eligibility determinations and/or to disburse or deliver Title IV funds to a student or borrower

\* *For more examples, please see 34 C.F.R. § 668.2 and Dear Colleague Letter GEN 15-01*





## Third-Party Servicer Exclusions

Excluded functions or services include:

- Publishing ability-to-benefit tests;
- Financial and compliance auditing (including preparation of financial statements);
- Mailing of documents prepared by the institution;
- \*Warehousing of records;
- \*Providing computer services or software as long as the provider is not responsible for using the software for the institution's student aid processes.

## Third-Party Servicer Exclusions (continued)

\*The exclusion for the “warehousing of records” is restricted to the storage of Title IV related records and does not apply **if** the entity performs any Title IV activity on behalf of the institution within the data storage or hosted environment, such as remote or automated processing and/or the entity has view or update access to any student level information (i.e. enrollment, registration, academic, attendance, financial aid, etc.) within the hosted environment.

\*The exclusion for “providing computer services or software” does not apply if the provider performs any Title IV activity on behalf of the institution within the system thru remote or automated processing and/or the provider uses or has view or update access to any student level information needed for the determination of Title IV eligibility maintained in the system (i.e. enrollment, registration, academic, attendance, financial aid, etc.)

## Third-Party Servicer Exclusions (continued)

Does not include an employee of the institution, if the individual:

- Works on a full-time, part-time, or temporary basis
- Performs all duties under the supervision of the institution
- Is paid directly by the institution
- Is not employed by or associated with a third-party servicer
- Is not a third-party servicer for any other institution
- Does not perform Title IV functions or services on behalf of another institution.

## Third-Party Servicer Exclusions (continued)

### Other Employment-Related Exclusions

- Entities or individuals hired to review and/or revise an institution's policies and procedures to correct compliance deficiencies or to make recommendations for improvement.
- Entities or individuals hired to publish an institution's policies, procedures, handbooks, disclosures, etc. via print format, audio format, video format, and/or online.
- Entities or individuals hired to perform financial and compliance auditing, including preparation of financial statements.
- Entities or individuals assisting an institution in completing and/or submitting its response to a program review, audit, or investigation.
- Local or federal law enforcement agencies, fire departments, and/or other public safety agencies providing campus crime awareness and or drug and alcohol prevention services.

## Third-Party Servicer Exclusions (continued)

### Community Awareness Events and Publishing Exclusions

- Community awareness/public service FAFSA completion events and/or general Financial Aid presentations open to the public and not limited or restricted to attendance at a specific institution or institutions (i.e. College Goal Sunday).
- Publishing and/or mailing general student financial aid information, policies, procedures, handbooks or consumer information prepared by the institution via print format, audio format, video format, and or/online.

## Third-Party Servicer Exclusions (continued)

### Campus Crime / Drug and Alcohol Prevention Exclusion

- Campus Crime Awareness and/or Drug and Alcohol prevention informational meetings, instructional curriculum or programming, and/or public awareness campaigns/events that are open to the public and not limited to or restricted to attendance at a specific institution or institutions.

This exclusion does not apply if an institution requires attendance at an event or completion of training to comply with any Title IV requirement (Campus Crime and Security Act, Violence Against Women Act, Drug and Alcohol policy requirements, etc.)

## Third-Party Servicer Exclusions (continued)

### Financial Literacy Exclusion

- Financial literacy curriculum or programming, workshops, and/or public awareness campaigns/events open to Title IV and non-Title IV recipients.

This exclusion does not apply if an institution requires its students to attend a financial literacy event or complete financial literacy training or counseling to satisfy the institution's exit loan counseling or other Title IV requirement.

## Third-Party Servicer Exclusions (continued)

### Cash Management Exclusions

- Tier 2 arrangements as described in 34 CFR 668.164(f)
- Direct ACH transactions between an institution's treasury account and an account designated by a student for receipt of Title IV funds.
- Mailing of checks produced by the institution.



## Third-Party Servicer Questions



**If an institution performs Title IV functions or services on behalf of another institution (i.e. performs verification of student files; COD reporting; drawdown of funds; reconciliation of Title IV programs), is the institution considered a third-party servicer?**

Yes. If an eligible institution performs Title IV functions or services on behalf of another institution (separate OPE ID's not additional locations), the institution is considered a third-party servicer and subject to the applicable third-party servicer regulations.

## Third-Party Servicer Questions (continued)

**How does the Department determine whether or not an entity or individual that is performing work on behalf of an institution is a third-party servicer?**



In making a determination as to whether or not an entity or individual is considered a third-party servicer, the Department looks at each case individually and focuses on the specific service(s) or function(s) being performed at that institution, as opposed to a title that the entity may be using or a generic description of the types of services provided.

## Third-Party Servicer Questions (continued)

**Does the Department approve third-party servicers or recommend third-party servicers to perform Title IV functions on behalf of institutions?**



No. While the Department has oversight authority over third-party servicers that perform Title IV functions on behalf of an institution, the Department does NOT list, endorse, or approve third-party servicers.

## Third-Party Servicer Contract Requirements



Are there any restrictions or requirements when entering into a contract with a third-party servicer?

An institution's responsibility with regard to its compliance with Title IV, HEA requirements does not terminate with the execution of a servicing contract. Rather, the institution and the servicer become partners with the shared responsibility of ensuring that all aspects of Title IV compliance are met.

An institution cannot contract out its fiduciary responsibilities and obligations under the Higher Education Act.

## Third-Party Servicer Contract Requirements

Contracts with a third-party servicer must be written and must clearly and thoroughly describe the services and functions the servicer is responsible for providing or performing on behalf of the institution.



- Third-Party Servicer contracts must provide the physical address and primary phone number of the servicer's primary location, as well as the name, title, phone number, and e-mail address of the president or chief executive officer of the entity.
- If a third-party servicer subcontracts any of its contractual responsibilities, the contract must identify the subcontractor and clearly describe the functions performed on behalf of the servicer and institution by the subcontractor.

## Third-Party Servicer Contract Requirements (continued)



- Institutions must take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards to protect customer information and require service providers by contract to implement and maintain such safeguards.
- The institution must require the third-party servicer to agree to comply with all aspects of the Family Education Rights and Privacy Act (FERPA) with regard to the third-party servicer's receipt and use of any educational records provided by the institution.

## Third-Party Servicer Contract Requirements (continued)



In addition, contracts must contain language that requires the servicer to agree to:

- 1) Comply with all applicable statutory, regulatory, and other Title IV requirements;
- 2) Refer any suspicion of fraudulent or criminal conduct in relation to the institution's Title IV program administration to the Department's Office of the Inspector General;
- 3) Confirm student eligibility and return Title IV funds (if required) when a student withdraws if the servicer disburses funds;
- 4) Return all records related to the servicer's administration of the institution's participation in the Title IV programs to the institution, and if the servicer disburses or releases Title IV funds, return all unexpended Title IV funds to the institution, if the contract with an institution is terminated, or the servicer ceases to perform any functions prescribed under the contract; and

# Third-Party Servicer Contract Requirements (continued)



- 5) Be jointly and severally liable with the institution for any violation of Title IV requirements resulting from the functions performed by the servicer

## What is joint and several liability?

Under joint and several liabilities, the Department may seek repayment for Title IV violations from the institution, the third-party servicer, or both.



Since the institution is jointly and severally liable for any violation committed by its third-party servicer(s), the institution should take precautions during its selection and contracting process; and implement procedures with appropriate controls to periodically assess that the functions or services performed on behalf of the institution are compliant with Title IV rules.



## Third-Party Servicer Contract Prohibitions

A third-party servicer may not enter into a written contract with an institution if:

- The servicer has been limited, suspended, or terminated
- The servicer has had, during its two most recent audits, an audit finding that resulted in the servicer being required to repay an amount greater than five percent of the funds that the servicer administered for any award year
- The servicer has been cited during the preceding five years for failure to submit audit reports in a timely fashion

## Third-Party Servicer Contract Prohibitions (continued)

- An institution may not contract with a third-party servicer to perform any aspect of the institution's participation in a Title IV program if the servicer (or its subcontractors) is located outside of the United States and/or is owned or operated by an individual that is not a U.S. citizen or national, or a lawful U.S. permanent resident.

## Contract Questions

**How can an institution determine if a third-party servicer or its principals have been debarred, suspended, or voluntarily excluded government-wide from participation in covered transactions?**



Institutions must search the General Services Administration's System for Award Management site at <http://www.sam.gov> when it enters into, renews, or revises a contract with a servicer to determine if the servicer is an excluded entity. The institution should keep a copy of the search results in its records.

## Contract Questions (continued)

**How can an institution determine if the Department has imposed an emergency, limitation, suspension, or termination action with regard to a servicer's ability to contract with the institution to administer any aspect of its participation in the Title IV, HEA programs, pursuant to the provisions of 34 C.F.R. Part 668, Subpart G?**



The Department will notify an institution in writing if the institution reports a servicer that has been limited, suspended, or terminated by the Department, or if the Department has imposed an emergency action on the servicer.

## Contract Questions (continued)

### **Under what circumstances must an institution require a third-party servicer to sign a Certification By Lower Tier Contractor form?**



An institution is required to obtain a signed Certification By Lower Tier Contractor form from all of its third-party servicers, as well as any subcontractors that perform work for the institution on behalf of a third-party servicer. The Certification By Lower Tier Contractor form is included as an attachment to the institution's PPA. The school must make copies of the form and obtain the signatures of any and all Lower Tier Contractors on copies of the certification. The signed certification(s) are to be retained in the school's files. A Lower Tier Contractor includes any contracted individuals not considered employees of the school, who participate in the school's administration of the Title IV programs.

## Third-Party Servicer Reporting Requirements

### **Are institutions or third-party servicers required to notify the Department when it enters into a contract?**

Yes, institutions are required to notify the Department within 10 days of the date it enters into, modifies, or terminates a contract with a servicer to administer any aspect of its participation in the Title IV programs.

- An institution's notification must include the name and address of the servicer
- An institution shall provide a copy of the contract and any modifications to the Department, if requested

Access at [eligcert.ed.gov](http://eligcert.ed.gov):

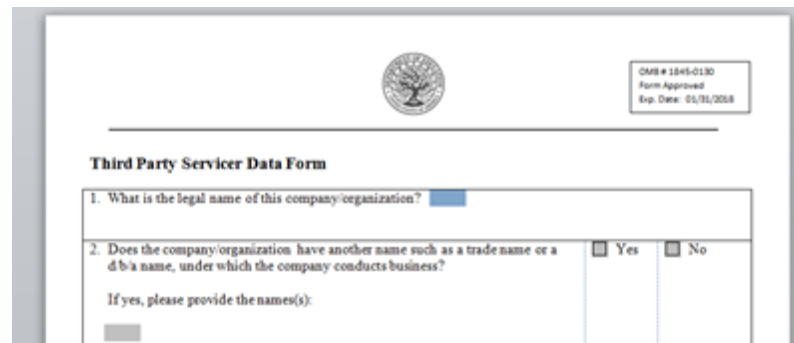
Electronic Application for Approval to Participate in the Federal Student Financial Aid Programs (E-App)

# Third-Party Servicer Reporting Requirements (continued)

Third-party servicers that contract with institutions to perform any aspect of the administration of the Title IV programs are required to report the names of the institutions it contracts with to the Department.

February 12, 2015 Electronic Announcement

Subject: Third Party Servicer Data Form – Reporting Requirement



The image shows a screenshot of a web-based form titled "Third Party Servicer Data Form". At the top center is the U.S. Department of Education seal. To the right of the seal is a box containing the text: "OMB # 1845-0130", "Form Approved", and "Exp. Date: 01/31/2018". Below the seal and box is a horizontal line. The form title "Third Party Servicer Data Form" is centered below the line. The form contains two numbered questions. Question 1 is "1. What is the legal name of this company/organization?" followed by a text input field. Question 2 is "2. Does the company/organization have another name such as a trade name or a d/b/a name, under which the company conducts business?" followed by "Yes" and "No" radio button options. Below question 2 is the text "If yes, please provide the names(s):" followed by a text input field.

## Safeguarding Student Information

Postsecondary educational institutions participating in the Title IV, HEA programs are subject to the information security requirements established by the Federal Trade Commission (FTC) for financial institutions.

As mentioned previously, institutions must take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue and require service providers by contract to implement and maintain such safeguards.





## Safeguarding Student Information (continued)

**Are there any limitations or restrictions on the type of information that an institution can provide to its third-party servicer?**



Yes. The information provided to a third-party servicer is limited to the information necessary for the third-party servicer to perform the Title IV function(s) or service(s) the third-party servicer has contracted to perform on behalf of the institution.

Institutions must ensure that its third-party servicers use PII only for the purpose(s) for which the information was disclosed. For a third-party servicer, that purpose is the Title IV function the servicer contracted to perform on behalf of the institution. Servicers are prohibited from using PII for any other purpose.

The Department will initiate an administrative action against the institution and/or its third-party servicer if a servicer violates this prohibition.

## Safeguarding Student Information (continued)

### **Are there any limitations or restrictions on granting a third-party servicer access to Department Systems?**



Yes. For both institutions and third-party servicers, access to information in Department systems may only be used for the Title IV function or service that is being performed. The data contained in Department systems such as the National Student Loan Data System (NSLDS), the Common Origination and Disbursement (COD) System, or the Central Processing System (CPS) is confidential and is protected by the Privacy Act of 1974 as amended and other applicable statutes and regulations.

An eligible institution or third-party servicer that allows unauthorized access to Department systems will be considered to have violated its responsibilities and places itself at risk of losing access to Department systems and data, and to possible loss of eligibility to participate in the Title IV aid programs.

## Third-Party Servicer Compliance Audit Requirements



*A comprehensive review of an organization's adherence to regulatory guidelines.*

## Third-Party Servicer Compliance Audit Requirement

A third-party servicer that performs any aspect of an institution's administration of the Title IV programs must have an independent auditor conduct a compliance audit of its administration of the functions or services that it performs on behalf of eligible institutions, unless:

- 1) the servicer contracts with only one participating institution, and
- 2) the attestation engagement of that institution's participation involves every aspect of the servicer's administration of the Title IV programs.

Third-party servicers must follow the procedures contained in the audit guides (<http://www2.ed.gov/about/offices/list/oig/nonfed/sfa.html>) developed by and available from the Department of Education's Office of the Inspector General (OIG), provided that the Federal student aid functions performed by the entity are covered in the submission.



## Third-Party Servicer Compliance Audit Letter Requirement

In cases where the Title IV services or functions performed by a third-party servicer are not covered in the OIG's audit guide, the third-party servicer must submit a letter that asserts it is (or was) an eligible third-party servicer (as outlined in 34 C.F.R. § 668 subpart G) to the Third-Party Servicer Oversight Group.

Among other things, the letter must provide management's assertion that it complied with all applicable requirements in regards to the services and functions that it performed on behalf of eligible institutions.

## Third-Party Servicer Compliance Audit Letter Requirement (continued)

- Third-party servicers that provide services or functions that are not included in the OIG's audit guide must submit an audit letter containing all of the items outlined above, no later than six months after the last day of the servicer's fiscal year, that begins on or after December 31, 2016.

For example, if a third-party servicer's fiscal year end is December 31, 2016; its audit letter must be submitted on or before June 30, 2018.

- Subsequent audit submissions must be submitted no later than six months after the last day of the servicer's fiscal year end.

## Third-Party Servicer Compliance Audit/Letter Address

Third-Party Servicer audits and audit letters should be submitted to the:

Third-Party Servicer Oversight Group – Audits  
U. S. Department of Education - FSA  
1010 Walnut Street Suite 336  
Kansas City, MO 64106-2147

Or as an encrypted e-mail attachment to:

[fsapc3rdpartyserviceroversight@ed.gov](mailto:fsapc3rdpartyserviceroversight@ed.gov)

## Third-Party Servicer Compliance Audit Questions

Audit questions should be submitted to the Department of Education's Office of the Inspector General's (OIG's) Non-Federal Audit Team by e-mail at [oinon-federalaudit@ed.gov](mailto:oinon-federalaudit@ed.gov).





## Standards of Administrative Capability

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the established standards. Among these standards, the institution must:

- Designate a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates;
- Administer the programs with adequate checks and balances; Develop and maintain written policies and procedures; and
- Establish and maintain required records.



## Standards of Administrative Capability (continued)

Institutional staff must have access to appropriate Title IV regulatory training and resources to evaluate the policies, procedures, and practices utilized by the institution and any third-party servicer the institution contracts with to ensure the institution remains compliant with the rules and regulations governing the Title IV programs.

The Department **DOES NOT** endorse or approve third-party servicers. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance.

## Standards of Administrative Capability (continued)



- The institution must ensure that its third-party servicers (and its subcontractors) comply with applicable Title IV, HEA regulations and program requirements and must ensure that all third-party service contracts contain the required language outlined under 34 C.F.R. § 668.25(c)
- The institution must ensure that there are written procedures in place that clearly outline the responsibilities of the institution versus the responsibilities of the Servicer
- Absent comprehensive policies and procedures and/or a detailed contract, the institution cannot ensure that the Servicer is properly administering all aspects of the Title IV, HEA programs that the Servicer is performing on behalf of the institution

## Standards of Administrative Capability (continued)



### Adequate Record Keeping



An institution and its third-party servicer must maintain all records needed to properly account for the institutions receipt and expenditure of Title IV, HEA funds including all source documents used to support Title IV, HEA disbursements.

The institution must ensure that it has access to all records provided to or created by its third-party servicers (and subcontractors) and the records are maintained in a systematically organized manner. The institution must be able to make its records readily available to the Department for review.

The institution must ensure that its third-party servicers have access to all records necessary for the servicer to fulfill its administrative and fiduciary responsibilities under the Title IV regulations.

## Fines, Liabilities, Limitations, Suspensions, and Termination Proceedings

The failure of a participating institution or any of the institution's third-party servicer (or its subcontractors) to properly administer any aspect of a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for:

- An emergency action against the institution and/or servicer;
- A fine on the institution and/or servicer;
- The limitation, suspension, or termination of the institution's participation in that program; and/or
- The limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

*Regulations: 34 CFR § 668.82(c)*

## Fines, Liabilities, Limitations, Suspensions, and Termination Proceedings

- An institution may be held responsible for any liability owed to the Department by the institution's third-party servicer (or its subcontractors) for a violation incurred in servicing any aspect of that institution's participation in the Title IV programs and remains responsible until that amount is paid in full.

*Regulations: See 34 C.F.R. § § 668.23(f)(2); 668.23(g)(4)*

## Reporting Suspicious Activity

OIG Hotline - <http://www2.ed.gov/about/offices/list/oig/hotline.html>

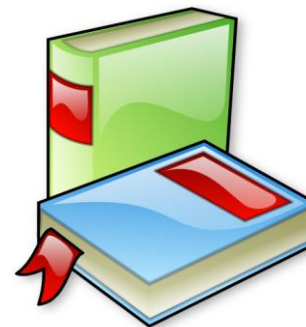
To report fraud, waste, abuse, misuse or mismanagement of U.S. Department of Education (ED) program funds (this could include complaints concerning employees, fund recipients, educational institutions, contractors, collection agencies, or lending institutions), please download and complete a hardcopy of the **Hotline Complaint Form** and mail or fax to:

**Inspector General's Hotline  
Office of Inspector General  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1500  
Fax: 202-245-7047**



**If you prefer, you may contact the Inspector General's Hotline by calling:  
1-800-MIS-USED.**

## Resources



- 34 CFR § 668.2
- 34 CFR § 668.23
- 34 CFR § 668.25
- 34 CFR § 668.82 - 86
- 34 CFR § 668.200
- Dear Colleague Letter GEN-12-06
- Dear Colleague Letter GEN-12-08
- Dear Colleague Letter GEN-15-01
- Third-Party Servicer Q & A



# Resources

## Third-Party Servicer Oversight Group

Ralph LoBosco, Director 816-268-0440

Angela Beam, Compliance Manager 816-268-0543

[FSAPC3rdpartyserviceroversight@ed.gov](mailto:FSAPC3rdpartyserviceroversight@ed.gov)

Main Line: 816-268-0543

## Presenter Contact Information

We appreciate your feedback and comments.

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