



A Robinson+Cole Legal Update

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Department of Education Releases Issue Papers to Strengthen Program Integrity and Institutional Quality

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On January 2, 2024, the Department of Education (DOE) released six issue papers that contain a range of proposals to ensure institutions of higher education and federal student aid programs best serve students. The issue papers will be discussed by the Institutional Quality and Program Integrity Committee in keeping with the required negotiated rulemaking process for regulations related to federal student aid programs. The DOE will consider input from committee members, as well as the public, before issuing its final regulations.

Here are the highlights from the proposals contained in the six issues papers:

First, the proposals seek to give students better access to their financial aid and ensure that students receive fair treatment across aid programs. This includes cash management regulations establishing procedures on how educational institutions may request, maintain, disburse, and otherwise manage Title IV funds. For example, the proposals state that institutions must issue a credit balance to any student who receives Title IV aid and has any amount of aid remaining after the cost of tuition and fees. Furthermore, institutions cannot include the cost of books and supplies as part of tuition and fees.

Second, the proposals would expand eligibility for federal TRIO programs that serve students from disadvantaged backgrounds. Federal TRIO programs include the Talent Search program, the Educational Opportunity Centers program, and the Upward Bound program. Specifically, the proposals seek to broaden the language around citizenship requirements to include students who have enrolled in or seek to enroll in a high school in the United States, territories, or Pacific Freely Associated States, which are served by TRIO programs.

Third, the DOE seeks to strengthen the accreditation process for agencies responsible for overseeing the quality of education provided by institutions and programs. The DOE relies on accreditation to determine whether an institution is deserving of federal aid. The proposed regulations seek to:

- Implement a process that focuses on the areas of greatest risk among accrediting agencies by requiring a demonstration of a federal link to allow the DOE to better understand and account for the risk that an accreditor presents and in accrediting agencies' reviews of institutions.
- Reinstate requirements that an accreditor be "widely accepted" as a reliable authority.
- Require accreditors to act more quickly in some circumstances when they conclude an institution is non-compliant with the accreditor's standards.
- Revise substantive change requirements to strengthen the review process for new locations, distance education offerings, and additional programs.
- Eliminate exceptions that allow accreditors to delegate certain decisions to their staff or allow institutions to not notify agencies of a substantive change under certain circumstances and include a risk analysis for institutions that are on sanction, negative action, or provisional certification process as to whether they pose a significant risk to students.

The DOE also proposed many questions to better understand other areas of implementation for certain regulations.

Fourth, the proposals contain changes to the current regulations concerning the state authorization requirements for educational institutions. Under the Higher Education Act of 1965, an institution is considered eligible for federal student aid programs if it is legally authorized to provide postsecondary education by the state in which it

operates. The proposed changes seek to protect students by strengthening state authorization and licensure requirements, as well as amending the scope of state authorization reciprocity agreements.

Lastly, the proposals would allow the DOE to obtain additional data on distance education so it can compare outcomes of students learning online and be better prepared in the event of college closures. For example, the DOE proposes creating a virtual location for institutions that include all students who are being instructed primarily through distance education.

We will continue to follow these developments closely. Robinson+Cole is well-versed in higher education issues and is assisting schools in anticipation of any revised regulations.

For more information, please contact the author above.

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