

Experts Weigh In: Unpacking ED's New Regulations For Higher Ed Vendors - Transcript

1

00:00:03.880 --> 00:00:16.910

Noah Sudow: Hi all, and welcome to our Webinar. We're gonna give folks a minute to join. I know we had a lot of people register and a lot of questions. So we're excited to dig in quickly. But we'll start in about 1-2min.

2

00:00:34.640 --> 00:00:45.030

Noah Sudow: Okay, it looks like people are still populating in on the attendee side. We're going to give it another couple of seconds, and then we'll kick off. But thanks again for joining.

3

00:00:48.020 --> 00:00:53.290

Noah Sudow: Okay. Well, I know we have a lot to cover, so we're going to jump into it pretty quickly.

4

00:00:53.290 --> 00:01:23.290

Noah Sudow: But for those who don't know me, i'm no a pseudo senior Vice President and White Board advisors. We are so excited to be here with Charlie Dennis and Allison. It's been a while, 2 and a half weeks, I guess. Really 2 weeks of the day since the new dear calling letter was issued. We have been. We've gotten a lot of questions since then, and we're excited to put this Webinar together, really in in just a matter of days. We've had just a lot of people

5

00:01:23.290 --> 00:01:53.280

Noah Sudow: register for this, and we also received over 50 separate questions, 50 in advance for the Webinar. So we're going to do our best to to really go through all of them. We've taken some liberties and grouping questions together, but really hope that we can provide more information and more context about this new dear colleague, letter and responsibilities for third party services, institutions and what it all means. We're gonna we're gonna do this. And really 4 sections. We're going to start with

6

00:01:53.280 --> 00:02:23.210

Noah Sudow: some terminology overview because there is a lot of acronyms in terms being discussed. We'll talk a little bit about the context for this. Why, why is the Department doing this? And then we'll spend most of our time really walking through the dear colleague letter in, in in the variety of questions that we got about what it is, Who who's now? A third party servicer who is not, and what it means. Then we'll spend a few minutes at the end talking about what's next. So but before we get started. I really want to think

7

00:02:23.210 --> 00:02:52.210

Noah Sudow: Hmbr. For collaborating with us on this. We're so excited to have you. We'll do a short round of introductions for those that don't know whiteboard advisors. We are strategy, research, consulting, firm to education, investors, institutions, and executives. We advise on nearly every major educational transaction. We're former policy wants to just to get my background. I'm. A former assistant, Vice Chancellor for the Ohio Department of Higher Education, and worked for many years on the State side. I'll toss it over to my colleague Allison to give her background

8

00:02:52.210 --> 00:02:55.610

Noah Sudow: as well, and then she can send it over to the Hmvr team.

9

00:02:55.830 --> 00:03:13.900

Alison Griffin: Thanks, Noah so great to be with everyone. I'm. Allison Griffin, also Senior Vice President at whiteboard Advisors. I have spent over 20 years in public policy in the Higher LED. Space, starting my career actually as a policy adviser to the Us. House of Representatives Committee on Education in the workforce.

10

00:03:13.900 --> 00:03:29.610

Alison Griffin: and now also chair the board of a public institution. I'm. In Colorado. So bring a trustee lens to these conversations as well. Dennis, i'm going to toss it to you. Thank you so much for being here.

11

00:03:29.610 --> 00:03:45.420

Dennis Cariello: So yeah, just quick a. H. And B. R. Hogan Marin Babon rose. We're education and health care law, firm focus on transactions and regulatory matters in the space myself. I I was a Deputy general counsel for Post Secondary Education

12

00:03:45.420 --> 00:03:53.790

Dennis Cariello: in the Us. Department of Education under a Secretary Spellings, and then separately. Duncan, which is where I met. Charlie Rose actually.

13

00:03:53.810 --> 00:04:06.660

Dennis Cariello: and then I left and and went outhouse council for a while, and then ultimately paired back up with Charlie, and and now we co-chair the education practice at Charlie.

14

00:04:07.580 --> 00:04:33.980

Charlie Rose: Thanks, Dennis, and thanks, Noah and Allison Good afternoon. My name is Charlie Rose, and, as Dennis mentioned, I'm. A partner at Hogan, Marin, Babo, and Rose. I just spent my career representing education, institutions, and a variety of matters most relevant to this topic is my representation of higher LED institutions,

as well as education, related businesses and regulatory compliance and transactions.

15

00:04:34.070 --> 00:04:51.900

Charlie Rose: and, as Dennis mentioned, I also served as general counsel at the U.S. Department of Education during the first 2 and a half years or so of the Obama Administration Under Secretary Duncan. So thanks again for having us, and we look forward to the discussion

16

00:04:52.870 --> 00:05:18.600

Noah Sudow: awesome before we dig in. I do want to note that we do have a Q. A. Feature enabled so people to have questions again. We got so many advanced, so we have a lot to cover today. But please feel free to elevate things through that function. I'll start out with you some basic terminology, Allison, since you worked on the hill. Maybe you could help us start with. What's the difference between a law rule and Dcl. Dear colleague, Letter.

17

00:05:18.600 --> 00:05:47.390

Alison Griffin: Oh, well, of course, we all know that the law or the statute is what we tend to go to what we tend to gravitate toward when we are looking for understanding the the boundaries of what we can and cannot do, but oftentimes that rule or the regulations are then further guidance that help policy makers and those who are implementing

18

00:05:47.390 --> 00:06:12.650

Alison Griffin: what is actually being surfaced. The issue at hand actually helps to to guide the implementation. And then a dear colleague letter is also sometimes known as as sub regulatory guidance, that offers even deeper perspective and guidance around implementation of the regulatory framework or the statute.

19

00:06:14.520 --> 00:06:24.460

Noah Sudow: Dennis. Charlie, I'm. Curious. You have more to add, and i'm also curious like you both served. You know, in the Department of education. How do Dcl's happen? What's the process?

20

00:06:25.660 --> 00:06:44.490

Charlie Rose: There's a there's an internal clearance process for issuing a dear colleague Letters Allison properly noted. It's called sub regulatory guidance. Generally speaking, a dear tallied letter is issued in connection with a particular policy objective.

21

00:06:44.490 --> 00:06:55.010

Charlie Rose: The the Department wants to accomplish, so there is an internal clearance process, as I mentioned, involving the key offices

22

00:06:55.010 --> 00:07:09.840

Charlie Rose: that are relevant to that particular guidance depending on the nature of the guidance, other agencies may become involved in the the clearance process, such as the White House Office of Management and Budget Department of Justice.

23

00:07:09.850 --> 00:07:23.870

Charlie Rose: or for or perhaps other agencies with subject matter expertise. You know the there's always a question about whether your colleague letters are binding.

24

00:07:24.120 --> 00:07:35.090

Charlie Rose: Importantly. A dear colleague letter represents the interpretation of the particular statute or regulation that is the subject of that. Your colleague letter.

25

00:07:35.210 --> 00:07:44.950

Charlie Rose: while it's sub regulatory guidance. It does represent, as I said, that departments, or that administration's interpretation

26

00:07:45.230 --> 00:07:53.410

Charlie Rose: Theoretically, I suppose a an entity could challenge that by

27

00:07:53.460 --> 00:08:11.640

Charlie Rose: by engaging in conduct that wasn't consistent with the guidance of the dear colleague letter, and that at the agency took action against that particular institution, challenge it through the administrative process, or ultimately in court.

28

00:08:11.640 --> 00:08:31.510

Charlie Rose: to ascertain whether that particular interpretation invited in the letter is is accurate, but certainly their colleague letters are important. They signal how the Administration is gonna move forward on a an important legal or policy or regulatory issue.

29

00:08:31.510 --> 00:08:43.470

Charlie Rose: and, Generally speaking, the the entities are are encouraged to act in accordance with the interpretation that's outlined in the their colleague Letter

30

00:08:43.510 --> 00:08:46.380

Charlie Rose: Dennis, do you have anything to add to that.

31

00:08:46.430 --> 00:08:58.350

Dennis Cariello: Yeah, I You know the the binding question is interesting one, because it it's more like the Dcl. Is is binding on the agency right? It's kind of. If you comply with the the Dcl. It's a safe hard. You you've done.

32

00:08:58.430 --> 00:09:12.770

Dennis Cariello: You are in compliance. You know it's there are times, though, where you know where the Dcl. Might be potentially variance with the regulation. And so, if you comply with the regulation.

33

00:09:12.900 --> 00:09:20.300

Dennis Cariello: you would have an argument in court, I think the problem is in our system. Justice courts grant

34

00:09:20.470 --> 00:09:34.370

Dennis Cariello: agencies a fairly extensive difference. And so, if you get into that particular situation, you may have a bit of an uphill battle, particularly going back to what I said about the statute. The standard here is pretty large

35

00:09:34.670 --> 00:09:40.100

Dennis Cariello: that the regulation is a bit narrower might influence

36

00:09:40.420 --> 00:09:45.610

Dennis Cariello: the judge's decision as to what the what the validity of the guidance.

37

00:09:48.420 --> 00:09:49.130

Alison Griffin: Nope.

38

00:09:49.280 --> 00:09:54.130

Noah Sudow: Alison, i'll say, if you want to lead us into the next section. This has been really helpful and stful background.

39

00:09:54.140 --> 00:10:04.470

Alison Griffin: Absolutely. So i'm going to set some context, you know. Some of the questions are on: how do we get here? What is the problem? Actually, that the Department is seeking to solve?

40

00:10:04.500 --> 00:10:10.480

Dennis? I'm gonna i'm gonna go to you first, and then we'll come back around with the group.

41

00:10:11.090 --> 00:10:12.790
Dennis Cariello: So I think there are.

42
00:10:13.520 --> 00:10:17.440
Dennis Cariello: broadly speaking, 2 issues here. The

43
00:10:17.690 --> 00:10:36.370
Dennis Cariello: The department at the on the same day came out with the the third party service for guidance, and then guidance related to incentive compensation for bundled service provider, exception for those who don't know bundle service, provider exception is.

44
00:10:36.620 --> 00:10:43.920
Dennis Cariello: I guess I don't even know that's an exception, but it's treated as an exception to the incentive compensation ban, and it allows it

45
00:10:44.050 --> 00:10:47.090
Dennis Cariello: institutions to pay a revenue share

46
00:10:47.150 --> 00:10:56.110
Dennis Cariello: 2 entities providing bundled services. So this would be recruitment, a learning management system, various academic support services, and so forth.

47
00:10:56.420 --> 00:11:06.360
Dennis Cariello: This was related to guidance that was issued back in March of 2,011, on the heels of the revised incentive compensation regulations.

48
00:11:06.530 --> 00:11:12.110
Dennis Cariello: Well. these opms, as they are known that the bundle service. Providers

49
00:11:12.430 --> 00:11:17.280
Dennis Cariello: have it have come under some scrutiny lately

50
00:11:17.290 --> 00:11:37.010
Dennis Cariello: related to their the perceived lack of transparency and involvement in the schools, and they, the education that some would say that they provide. Obviously the schools are very much in charge of the education. Every one of these contracts, but critics have challenged that, and as a result.

51

00:11:37.090 --> 00:11:43.970

Dennis Cariello: that is, I believe, the principal issue that's driving the entire topic. It's the opms

52

00:11:44.100 --> 00:11:58.320

Dennis Cariello: relatedly, however, and the Department talks about this in the in the front part of the dear colleague. The department does not have a particularly good understanding of all the service providers in the higher red spectrum.

53

00:11:58.490 --> 00:12:11.520

Dennis Cariello: and this came up back in 2,015, which was the last time the Department really issued a dear colleague letter on third party servicer. There was a follow on FAQ. It was just in 2,016,

54

00:12:11.540 --> 00:12:17.410

Dennis Cariello: but the department has this constant refrain that that the higher risk sector is evolving.

55

00:12:17.470 --> 00:12:22.160

Dennis Cariello: and they just don't have a tab on it. They don't even know who to look at, or who's involved.

56

00:12:22.210 --> 00:12:28.050

Alison Griffin: Sure, Well, as a reminder, I mean the last time the Higher Education Act was reauthorized with 2,008.

57

00:12:28.050 --> 00:12:52.260

Alison Griffin: And so I. You know my reminder of that. Every day is my 15 year old, son. So you know I. You know that higher education landscape has also evolved considerably in the last 15 years, and so it, of course, on on some on some sides. It makes sense that the Department would want a little bit more information about the evolution of the broad ecosystem.

58

00:12:52.370 --> 00:13:09.350

Dennis Cariello: It it does. It does make sense, and you know it even is going back. And you talk about the the underlying statute, and like sessions even older than that. All right 20 usc 1 88, and there, back in that time. Third party services were what we all traditionally thought of as a third party servicer

59

00:13:09.390 --> 00:13:14.400

Dennis Cariello: financially processing folks like fame or Ecm or global.

60

00:13:14.490 --> 00:13:17.790

Dennis Cariello: You didn't have a financial in August. They came in and did it for you.

61

00:13:17.840 --> 00:13:22.780

Dennis Cariello: Now things have changed, and the Department is trying to get a handle on all of this.

62

00:13:23.630 --> 00:13:40.420

Alison Griffin: Absolutely. So let's let's go to the Dcl. What have been the concerns that the Department both addresses in the Dcl. And you mentioned the bundled services category the safe harbor.

63

00:13:40.690 --> 00:13:45.000

Alison Griffin: When did that originate, Charlie? Do you? Wanna do you want to jump in here.

64

00:13:45.240 --> 00:13:55.800

Charlie Rose: Sure the the is Dennis mentioned the the dear colleague letter, which created the bundled services. Exception was issued

65

00:13:55.820 --> 00:13:59.520

Charlie Rose: by the Obama Administration in March of 2,011,

66

00:13:59.690 --> 00:14:11.370

Charlie Rose: and the March 2011. Your Thailand letter had a very specific purpose, and that was to allow what are now called online program management

67

00:14:11.480 --> 00:14:25.980

Charlie Rose: entities to work with institutions on a revenue sharing basis in order to, among other things, really build distance, education, or online platforms.

68

00:14:26.110 --> 00:14:31.060

Charlie Rose: 1112 years ago or so 13 years ago

69

00:14:31.170 --> 00:14:44.370

Charlie Rose: that aspect of delivering instruction certainly wasn't as robust as it is now, and it's pervasive as it is now. But the March 2011. Your colleague letter provided a mechanism

70

00:14:44.510 --> 00:14:49.010

Charlie Rose: to do that, as Dennis and you also mentioned

71

00:14:49.250 --> 00:15:02.600

Charlie Rose: the growth, you know, has prompted increasing scrutiny on the role of opms in higher education. So if you look at the Tps guidance that was issued a couple of weeks ago.

72

00:15:02.680 --> 00:15:16.300

Charlie Rose: particularly the first 3 paragraphs, the department references, the Government accounting office report that was issued in April, 2022, about opms

73

00:15:16.380 --> 00:15:20.770

Charlie Rose: and and in that context

74

00:15:21.110 --> 00:15:31.790

Charlie Rose: the Department seems to be saying in the Tps guidance that in order to address some of the concerns that were identified

75

00:15:31.790 --> 00:15:48.310

Charlie Rose: by the Gao, it's necessary to revise the Tps guidance, and specifically revise it in a manner that identifies these core functions. The third party services provide

76

00:15:48.310 --> 00:15:59.810

Charlie Rose: such a student recruitment involvement in title 4, and also instructional content and delivery to encompass them, and what

77

00:15:59.930 --> 00:16:17.840

Charlie Rose: what the trans, what the Tps guidance does, and the regulation does more broadly is provide a platform for transparency, and ultimately accountability, and the structure of the particular guidance here

78

00:16:18.000 --> 00:16:31.720

Charlie Rose: picks up not only those opms that were traditionally thought of as third party services, but because of the breadth of the guidance picks up non opm, or i'm sorry opms

79

00:16:31.920 --> 00:16:46.300

Charlie Rose: that typically we're not thought of as non is a third party services, so it really uses the third party service or guidance to encompass the entire opm industry, and then subject

80

00:16:46.300 --> 00:16:53.380

Charlie Rose: the opms to the transparency and accountability provisions built into the Tps regulation.

81

00:16:53.380 --> 00:17:12.300

Alison Griffin: Absolutely, and I thank you that that provides a really a good overview and a great level setting, as we really dissect some of the elements of the the Dcl: and so, Noah, as as I turn it back to you, I would love your thoughts on.

82

00:17:12.300 --> 00:17:21.119

Alison Griffin: Why did this happen so quickly? But why so broad was this intended to be so broad, and then let's stop into some of the elements of the letter.

83

00:17:21.119 --> 00:17:34.520

Noah Sudow: Yeah, and i'll. I'll even add in a little bit more on the context here, you know, around opms, because I think Charlie's point is just really interesting. Around like there is is really hard to define what this is, and there's been a lot of pressure

84

00:17:34.520 --> 00:17:44.700

Noah Sudow: in particular on the revenue share side of this, especially from you know, certain Democratic members of Congress think tanks to. Really.

85

00:17:44.700 --> 00:18:13.180

Noah Sudow: you know, Close, they would say, to stop the the bundle services. Exception is sort of where the pressure's been, but really what they're asking for is a lot more information, and I think that kind of lends itself to why this is so broad and thinking about how big that definition of like, what is an online program manager mean, you know, because it's much. It it's beyond rep share. And there's people who fit into that repshare category that you probably wouldn't necessarily associate with sort of a traditional opm, and there's just so much

86

00:18:13.180 --> 00:18:31.560

Noah Sudow: that we that is sort of UN unknown out there in the space, and I think that is probably you know what the department you know is one of the things that they're interested in is really understanding the landscape, because in a lot of ways we get into the details about what does it mean to be? A third party servicer and compliant, and and you know, having.

87

00:18:31.560 --> 00:19:01.350

Noah Sudow: you know, having to report your arrangement and things like that. It's the the department is aware of this. I I do also want to add really quickly that it's interesting that in Dennis mentioned this

earlier, that in in conjunction with the to your colleague letter, they announced a listing tour around the instead of comp side of it. They could have just as easily issued to your colleague letter that, you know, amended the safe harbor removed it, you know, created more limitations on it, whatever whatever they wanted to do there. But they didn't, and we've heard that there's You know the people

88

00:19:01.350 --> 00:19:29.920

Noah Sudow: generally believe that there may be some good things, as Charlie was mentioned that have come from You know the the safe harbor. It kind of like, you know your your point about 2,008, 2,011 was a long time ago, especially if you think about the advances in online education, everything that happened during the pandemic. So there's a lot there's a lot we we need to learn or the country needs to learn about online education and and how these programs work that I think again sort of to Why, it's so broad. Maybe one of the reasons. But I i'd be interested in.

89

00:19:29.920 --> 00:19:39.050

Noah Sudow: you know Charlie and Dennis is read to on is is the reason why this is so broad? Because it had to be so broad? Or is there, you know, or is there more to it.

90

00:19:41.660 --> 00:19:48.370

Dennis Cariello: Well, I just I I don't know that it had to be this broad, I mean, I think the Department could have come out with

91

00:19:48.550 --> 00:19:54.330

Dennis Cariello: an opm specific regulation that because of that, while

92

00:19:54.560 --> 00:19:56.200

Dennis Cariello: any of the

93

00:19:56.270 --> 00:20:08.040

Dennis Cariello: underlying services may not be a third party service to render a provider a third party service or the combination of them could have made them a third party service. I mean, I think there are a lot of

94

00:20:08.100 --> 00:20:14.480

Dennis Cariello: things that the Department could have done to be a bit more circumspect. I i'd also know

95

00:20:14.600 --> 00:20:16.240

Dennis Cariello: that in the fall

96

00:20:16.330 --> 00:20:32.550

Dennis Cariello: the Department, in its annual regulatory agenda, notified that the world that in April they intended to publish a notice of intent to negotiate the conduct and negotiated rule making on third party service or issues. So it

97

00:20:32.900 --> 00:20:49.170

Dennis Cariello: it's a little. I I think I was surprised. I mean I won't say it's why maybe others are not. But I was kind of surprised. I figured that third party service issues were going to dominate the regulatory agenda for a bit, but not quite yet so surprised that the vehicle.

98

00:20:49.280 --> 00:20:57.440

Dennis Cariello: and also surprised that if they were really trying to get an opms that they didn't they weren't a bit more circumspect in in how they did. So.

99

00:20:58.890 --> 00:21:04.290

Charlie Rose: Yeah, the I I I tend to look at this guidance in in 2 parts

100

00:21:04.580 --> 00:21:23.550

Charlie Rose: one is opms, and the other is not opms. With respect to the opms. As I mentioned, you know the the guidance through the transparency and the accountability mechanisms that are built into the Tps statute and the Tps regulation

101

00:21:23.870 --> 00:21:25.750

Charlie Rose: do

102

00:21:25.780 --> 00:21:32.070

Charlie Rose: go to some extent in addressing the Gao report.

103

00:21:32.670 --> 00:21:55.910

Charlie Rose: You know, the the opm industry has has really enabled many universities that simply Don't have the capital to build online programs for the benefit of students and remain viable, remain competitive and deliver a quality education.

104

00:21:56.410 --> 00:22:02.420

Charlie Rose: So so that's one aspect of of the guidance

105

00:22:02.700 --> 00:22:09.490

Charlie Rose: by expanding the definition of a Tps as department didn't guidance.

106

00:22:09.960 --> 00:22:16.370

Charlie Rose: and this is what's generated so much concern. It has brought into the conversation

107

00:22:16.430 --> 00:22:23.790

Charlie Rose: many non opm third party services that

108

00:22:23.820 --> 00:22:26.520

Charlie Rose: our vendors for higher education.

109

00:22:26.760 --> 00:22:39.050

Charlie Rose: and so that that second category of entities that are swept into the Tps definition, and therefore the transparency and accountability

110

00:22:39.190 --> 00:22:49.050

Charlie Rose: mechanisms that are built into the Tps statute and regulation is really what has been causing the tremendous amount of consternation.

111

00:22:49.150 --> 00:23:00.980

Charlie Rose: And, you know, given the breadth of the Tps guidance that was issued a couple of weeks ago. My guess is is that

112

00:23:01.090 --> 00:23:19.270

Charlie Rose: that breath is intentional in order to ascertain just what are the nature of these relationships, even among 9 opm entities that do provide services to higher LED institutions.

113

00:23:19.360 --> 00:23:36.000

Charlie Rose: And then that's what's generated the questions. You know why the foreign service, or why the foreign owned ban. Why, what does it mean to be joined? Several liable, those types of questions

114

00:23:36.000 --> 00:23:45.290

Noah Sudow: and we'll get we'll get to those shortly, by the way, and maybe this is a good, a good opportunity, you know, given Dennis, or given Charlie's comments to sort of walk through like.

115

00:23:45.290 --> 00:24:09.940

Noah Sudow: who's included who's not included, or sort of the why behind that. And this is one of the most fascinating pieces of reviewing the questions in advance, which is just. See the number of types of tools or services that people are interested in. So i'll i'll toss this over to Dennis, but before before we get there I just want to list out. Here are

some of the entities that people are interested in learning. If they're now a third party servicer.

116

00:24:09.940 --> 00:24:16.550

Noah Sudow: tele therapy, LED tech curriculum licensing providers, particularly in professional and continuing education.

117

00:24:16.640 --> 00:24:26.570

Noah Sudow: computer software and services. People are interested in it. Vendors help desk, cyber, security, monitoring it. Other it service providers, crms.

118

00:24:26.570 --> 00:24:43.800

Noah Sudow: oer providers, which is open education resources. Lms. Is. What about those that Aren't tied to enrollment? But you're talking to students about their decision making about where to go to college, or where to go to, you know, for a job or career. And then we got a few different questions

119

00:24:43.800 --> 00:25:12.500

Noah Sudow: from state agencies. I know there's several that are listening to this Webinar about whether or not they are now. Tps is, especially if they perform fafsa completion events or utilize fafsa data to a war State 8 programs which we know a lot of States States do. So. Dennis maybe also toss that really broad question of so many different people are trying to figure out right now. If they're a Tps, are they? What should they do? What, what? What should they be thinking about as they read this? Dcl.

120

00:25:13.310 --> 00:25:23.460

Dennis Cariello: Sure. Well, I I, to be honest, and the answer to majority of those is maybe right. I mean, you need to look at the contract and the operational relationship.

121

00:25:23.590 --> 00:25:28.870

Dennis Cariello: When we've gone through program reviews, I mean, we've had this where

122

00:25:29.080 --> 00:25:43.860

Dennis Cariello: a a school has said, oh, this service provider is a third party servicer and the servicer may not necessarily agree with that interpretation. And so the Department will come into a program review, not just of the servicer, but of about

123

00:25:44.040 --> 00:25:53.960

Dennis Cariello: 6 or 7 client organizations to see not only what does the contract say, but how does it operate in real life? So it's hard to say in any given case.

124

00:25:54.260 --> 00:26:04.810

Dennis Cariello: just based on, you know, like hey? I'm on, you know, an O, we are. Does that make me a third party servicer. I think that there are certainly some features here that

125

00:26:04.860 --> 00:26:13.820

Dennis Cariello: suggest that some of these are more likely to be than others, like an Lms that provides monitoring of student activity. That

126

00:26:14.120 --> 00:26:25.490

Dennis Cariello: that sounds like that might be, I mean again, I think, though, you really need to get to drill down onto what you do, and see what box it fills in. I mean I I do think of looking at this.

127

00:26:25.800 --> 00:26:29.820

Dennis Cariello: We should be aware that the the statute here

128

00:26:30.040 --> 00:26:30.940

Dennis Cariello: is

129

00:26:31.200 --> 00:26:41.530

Dennis Cariello: written in a broad way. I think that you again it just to get back to it. It talks about a third party service. Is any individual State organization

130

00:26:41.560 --> 00:26:49.770

Dennis Cariello: enters into a contract with the higher institution to administer through either manual or automated processing, any aspect

131

00:26:50.010 --> 00:26:52.960

Dennis Cariello: of such institutions. Student assistance programs.

132

00:26:54.590 --> 00:27:00.540

Dennis Cariello: That's sounds fairly broad, and I think at the time this is an older provision in the statute

133

00:27:00.830 --> 00:27:17.180

Dennis Cariello: that was probably focused on those financially processing servers that we talked about earlier, so perhaps that that

would be a real good place to have a revision is in the statute to really take into account what's gone on in the I don't know roughly

134

00:27:17.440 --> 00:27:21.200

Dennis Cariello: 40 years since that that's that she's been in active.

135

00:27:21.260 --> 00:27:28.770

Dennis Cariello: I think, in going through all of these provisions you really need to sit down and say, okay.

136

00:27:29.120 --> 00:27:46.850

Dennis Cariello: what is going on here, both in the contract and practically, and whether or not, you know, to to assess with the school as and service riders. And jointly assess, is this a third party service or function? I think there are some things that are.

137

00:27:47.180 --> 00:27:49.410

Dennis Cariello: I'd like to say pretty clear.

138

00:27:49.840 --> 00:27:51.730

Dennis Cariello: If you're doing work

139

00:27:51.840 --> 00:27:55.850

Dennis Cariello: with non-title for eligible students.

140

00:27:56.980 --> 00:28:13.420

Dennis Cariello: It seems like that's not going you're going to be okay. I'd like some a little additional clarity on that. But I think that that you know again, foreign students they don't seem to be implicated into this. I think if you're dealing with non title 4 programs

141

00:28:13.640 --> 00:28:32.090

Dennis Cariello: that again, I think there's a really good chance that that's not implicated. You know the State Associations. I mean one of the exclusions here is, if you're conducting, you know, fast for completion events that are general and broad. Right? We're not talking about for a specific college.

142

00:28:32.090 --> 00:28:36.220

Dennis Cariello: Then that's probably going to be okay. As well, but

143

00:28:36.420 --> 00:28:39.830

Dennis Cariello: you know it's it's very difficult

144

00:28:39.890 --> 00:28:56.980

Dennis Cariello: to say without getting deep in the weeds, whether you're a third-party service, or I mean it the example. In the 2 weeks or so I've had conversations, and Charlie and I have a conversations with everybody from service riders to recruitment folks to the people that that manage a

145

00:28:57.260 --> 00:29:10.620

Dennis Cariello: what do you call it? Like a marketplace for a kind of more unique lead Gen. Type option just traditional lead Gen. Folks and folks that do the academic engagement counseling.

146

00:29:11.250 --> 00:29:19.110

Dennis Cariello: And the answer, this is yeah, kinda just on a first blush. I could see why you're concerned, and maybe there's a way to deal with it.

147

00:29:19.200 --> 00:29:23.890

Dennis Cariello: But you know even the telehealth option. I think that you mentioned

148

00:29:24.510 --> 00:29:40.360

Dennis Cariello: My guess is probably no, but you know, is that related to maintaining academic engagement? I don't know, so I think the Department is going to. One helpful hint is, I think people should write letters department and comment.

149

00:29:40.370 --> 00:29:49.940

Dennis Cariello: And you know, if you don't want to expose who you are, or if you're kind of popping your head up and getting whack, you know, having examples out, there

150

00:29:50.040 --> 00:30:08.910

Dennis Cariello: would be helpful, because I think again, part of the problem. Here again, it's a legitimate problem Department doesn't know what it doesn't know. And so it needs to understand what the scope of the services are out there, so it can make reasons, determinations. So I think that that you know, finding a way to comment would be helpful

151

00:30:08.910 --> 00:30:10.470

Dennis Cariello: intelligence for the

152

00:30:10.710 --> 00:30:12.770

Charlie Rose: right. I

153

00:30:12.970 --> 00:30:23.420

Charlie Rose: yeah, just to follow up on Dennis's comments Briefly, there's there's no doubt that the breadth of the guidance, and

154

00:30:23.420 --> 00:30:37.790

Charlie Rose: by its nature the general description of the activities that would lead to a third party service or designation. you know, give rise to

155

00:30:37.860 --> 00:30:52.050

Charlie Rose: the concern, but also give rise to the potential application of it in a very broad way that sweeps in a lot of the entities that that NOAA identified. Now, whether that was

156

00:30:52.070 --> 00:30:58.570

Charlie Rose: the intent or not, I don't know, but that's certainly the way in which the guidance was written.

157

00:30:58.840 --> 00:31:08.960

Charlie Rose: So in that regard. I think there's 3 things to keep in mind, you know. One is that 2 days ago the department, I think, did a very important

158

00:31:09.070 --> 00:31:17.110

Charlie Rose: the act, and that was to delay the effective date to September one and extend the comment period.

159

00:31:17.210 --> 00:31:31.010

and by doing so I think the Department has signaled a willingness to try to address the concerns that in questions that we've been hearing, and try to generate

160

00:31:31.300 --> 00:31:46.060

Charlie Rose: some clarity moving forward in the application of the of Tps, and, like Dennis, I think it's absolutely critical that we share our comments and concerns and suggestions frankly for for clarity

161

00:31:46.080 --> 00:32:00.150

Charlie Rose: with the department. The second is is that I think we need to kind of look at a look at this and sort of concentric circles. You know the the

162

00:32:00.280 --> 00:32:11.380

Charlie Rose: the initial paragraphs of the your colleague letter identify 3 functions. You know that really generated the issuance of this guidance.

163

00:32:11.510 --> 00:32:14.860

and that is student recruiting and retention.

164

00:32:15.290 --> 00:32:28.580

Charlie Rose: provision of software, products and services, and I think this is important, involving title for administration activities. And then, finally, the third category.

165

00:32:28.630 --> 00:32:35.120

Charlie Rose: the provision, or I'm. Sorry the provision of educational content and instruction.

166

00:32:35.590 --> 00:32:42.150

Charlie Rose: So you know again, those are the 3 core functions.

167

00:32:42.910 --> 00:32:54.230

Charlie Rose: The breadth of the guidance perhaps, picks up other 9 opm entities or vendors that maybe extend beyond that. But I think that context is important.

168

00:32:54.420 --> 00:33:12.480

Charlie Rose: and then the the third is, you know, thing to keep in mind what is the consequence? Well, the consequence is a compliance audit that needs to be submitted every year; and second, this notion of joint several liability, and

169

00:33:12.520 --> 00:33:26.480

Charlie Rose: perhaps the the department will provide clarity on both of those functions. But you know to the extent that

170

00:33:26.670 --> 00:33:38.490

Charlie Rose: entities that are picked up, that weren't otherwise considered. Third Party servicers have some clarity on what joint and several liability means, so they can built it into the business model.

171

00:33:38.510 --> 00:33:50.310

Charlie Rose: and, second, what exactly is required with the compliance on it. Perhaps that will also put this in perspective. So I think kind of taking a 3 part. Analysis to this

172

00:33:50.390 --> 00:33:58.020

Charlie Rose: provides a a context that we can use, and and moving forward and and living under the guidance.

173

00:33:58.520 --> 00:34:12.820

Noah Sudow: and and I think the consequences, piece or sort of what it. What does it mean to be? A third party servicer. And what are the responsibilities of a third party service? Or is a great place to go and and one of the things that we've gotten a lot of questions on, including live

174

00:34:12.820 --> 00:34:39.719

Noah Sudow: is around foreign ownership. Maybe we can spend a few minutes just talking that through, because I think a lot of people have been sort of surprised by that trying to figure out what it means who who falls under that? Especially with such a broad category. There could be implications, you know, for investors, you know, with who have sort of foreign entities involved. So may maybe you, Dennis Charlie. I sort of be curious like we got one in the chat. That's asking, what's the basis

175

00:34:39.719 --> 00:34:54.100

Noah Sudow: or the you know, for this for this requirement that that they be us based, and sort of what it what is it being? And we're just. You're curious to get your guys take on, You know what? Why, why is this in there, and and what the impact is gonna be.

176

00:34:55.540 --> 00:35:03.480

Dennis Cariello: Yeah, I I I sympathize with the the questioner. There. I don't.

177

00:35:03.510 --> 00:35:15.040

Dennis Cariello: I've looked. I I don't see the the direct statutory basis for this. The first time I've I've seen that this came up was in the 2,016

178

00:35:15.090 --> 00:35:25.350

Dennis Cariello: FAQ document on third party services, and the Department barely clearly said that third party service, or cannot be a foreign owned entity.

179

00:35:25.430 --> 00:35:32.070

Dennis Cariello: and the department appears to, you know, essentially just. Use that language and and put it in here. I think that the

180

00:35:32.130 --> 00:35:49.840

Dennis Cariello: the issue here is I mean in the past. It was an issue because it didn't affect anybody. It's effective. We're figured very few people. Now you have. If it's affecting software providers or data hosting services that are literally on a global scale. Now, we have some real concerns, and

181

00:35:49.940 --> 00:35:53.510

Dennis Cariello: I think that what's also very unclear.

182

00:35:53.810 --> 00:36:03.580

Dennis Cariello: the Department will hopefully provide guidance on, as well as their statutory authority here. For this is what it means to be foreign owned

183

00:36:03.810 --> 00:36:18.490

Dennis Cariello: right. I mean, you look at that. You know it. It's not hard to come up with circumstances where, if you know a sovereign fund from another country owns, you know, 10% of of an enterprises does that make it foreign owned?

184

00:36:18.490 --> 00:36:38.160

Dennis Cariello: What if it's a global service, because company that has a Us. Affiliate that. That's the contracting entity. But again, it's a sub of a global entity and then add to the Fund. What if a New York private Equity Fund is the one who owns that global company? I think there are a lot of issues there. I think. Also

185

00:36:39.510 --> 00:36:56.180

Dennis Cariello: unclear is what the Department means when it says that the third party servicer cannot be operated by an individual, is not a Us citizen, or has authorization a a Us. Citizen, or or is legally present in the United States

186

00:36:56.230 --> 00:37:16.260

Dennis Cariello: on a permanent basis. I mean, that's you think, about the the goals of the country and having people come from other countries and and provide their expertise. Why, we have the whole visa of the work visa system, and it's really important part of of of American and of higher it generally. And why would we want to exclude those folks?

187

00:37:16.310 --> 00:37:35.610

Dennis Cariello: I think there there are just some legitimate questions. I hope the Department clarifies that that if you're here on a work visa, you can still be the CEO or Cfo of one of those companies, but I think there are some real questions about that, you know. The only thing I can think of is this goes back to data security issues.

188

00:37:35.610 --> 00:37:40.100

Dennis Cariello: The department. Not long before this your colleague came out with a

189

00:37:40.150 --> 00:37:54.260

Dennis Cariello: a note that third-party services had to be compliant with the the safeguard's rule. The Ftc under Graham Lee to Blely, and the Department has. It has a long standing history of being concerned about data security.

190

00:37:54.530 --> 00:38:10.280

Dennis Cariello: you know. Wonder if you know some of the issues that I come up with some tik Tok and all these other foreign technology providers that they're concerned about that in some way, perhaps. Perhaps that's what's motivating

191

00:38:10.280 --> 00:38:14.990

Dennis Cariello: it? But it seems like the 2 down 16. FAQ. Is the the source of this

192

00:38:16.640 --> 00:38:33.170

Charlie Rose: right and and the and then the the guidance that the paragraph for the first paragraph on Foreign Home issue begins with the lead in to protect the interest of institutions, taxpayers, and students.

193

00:38:34.730 --> 00:38:47.530

Charlie Rose: You know again, that's a very broad statement. It could encompass national security interests, privacy, interests. the integrity and title for interest, or or all of the above.

194

00:38:47.590 --> 00:38:57.360

Charlie Rose: If the Department is going to keep the prohibition, or even narrow it. I

195

00:38:57.690 --> 00:39:06.140

Charlie Rose: I think it would be helpful. And again, this is a subject for the comments and and some suggestions on how to clarify it, if it keeps it

196

00:39:07.300 --> 00:39:18.190

Charlie Rose: To answer the question that Dennis raised. And you know what is the standard or what is the criteria by which the Department is going to determine

197

00:39:18.290 --> 00:39:30.990

Charlie Rose: that the entity runs up against this foreign own prohibition, and therefore is ineligible to serve as a third party service here. And then what

198

00:39:31.150 --> 00:39:33.110

Charlie Rose: kind of

199

00:39:33.460 --> 00:39:41.420

Charlie Rose: period will be offered to institutions and those entities to to work out a transition plan?

200

00:39:41.960 --> 00:39:48.670

Dennis Cariello: Yeah, actually, on the comment period, just to highlight for folks in the department. In the Revised Dear Call.

201

00:39:48.760 --> 00:40:06.450

Dennis Cariello: specifically asked for comment on this point, they said, we are especially interested in comments on the impact of continuing the existing limitation of the institutions contracting with our entities. I think that that's that's helpful that they are really trying to understand this. And again, this is

202

00:40:06.490 --> 00:40:24.440

Dennis Cariello: It's part of that information gathering process. The department, you know, just doesn't know who the services are where they're from, and this indicates me that they're not trying to be putative with this, that they're just trying to understand. And well, it's probably said legitimately. Protect

203

00:40:24.440 --> 00:40:28.270

Dennis Cariello: interest of taxpayers and students and institutions.

204

00:40:30.460 --> 00:40:39.480

Alison Griffin: I I I I was gonna say, I mean, I agree on all that. I think there's so many questions that we really need to. You know we need. We need some clarity, of course.

205

00:40:39.480 --> 00:40:57.490

Alison Griffin: you know, and I'll just speculate for a second on the the challenge that this actually presents, you know, to our institutions who have been relying on outside providers, whether for and under us zone with foreign

206

00:40:57.610 --> 00:41:01.180

Alison Griffin: ownership or employees, because we don't, have

207

00:41:01.180 --> 00:41:25.500

Alison Griffin: we have. We Don't, have the talent base necessarily here in the States to do some of the things that we've been relying on some of our global counterparts to deliver for our institutions. So we almost get in this catch 22 circle, with some of the prohibitions, or alleged sort of a restrictions that are being placed on on foreign owned partners.

208

00:41:26.360 --> 00:41:41.990

Noah Sudow: and you know, and i'll just it's real quick to ask. I was gonna say like I I want to echo your point before, because I think it's really fascinating that when the Department extended the the the Enforcement date or clarified the Enforcement date, and then extended the amount of time that people had to comment and submit the forms.

209

00:41:41.990 --> 00:42:11.910

Noah Sudow: The only other change they made was to note that they're interested in comments around, you know foreign entities, and I think that sort of shows how much feedback they received, and how much confusion they've created on this topic. And again, just a a place that I think there's there hopefully will be more clarity that comes, you know, in the coming weeks, and something that people should should definitely ask questions and sort of share, you know, depending on how it is defined. You know what the implications of that could be.

210

00:42:12.120 --> 00:42:24.360

Dennis Cariello: and and you know we're talking about the implications. I think it's also worth commenting about. You know. Again, if if the Department pursued this within, say a limited sphere, or whatever

211

00:42:24.970 --> 00:42:30.740

Dennis Cariello: they're requiring universities to undo existing relationships in some of these areas

212

00:42:31.070 --> 00:42:49.640

Dennis Cariello: 6 months is not enough to get to undo them. I mean, you are talking about. You know, some of these there's you know, computer systems, very software systems to to come off one platform and upload another to ensure that the operations are maintained can easily take over a year

213

00:42:49.640 --> 00:42:58.490

Dennis Cariello: easily. Take over here, and I think that's something as well that people have to. That universities should be commenting on that this is not only is going to be incredibly costly.

214

00:42:58.620 --> 00:43:04.380

Dennis Cariello: but it's just it's going to take a long time, so we're going to need much more time to

215

00:43:04.510 --> 00:43:06.550

Dennis Cariello: come off of some of these relationships.

216

00:43:09.000 --> 00:43:12.510

Noah Sudow: Yeah, I just oh, sorry. Go for it.

217

00:43:12.510 --> 00:43:41.190

Alison Griffin: I mean. And I think of you know, some of our our smaller institutions, who, again, not being able, perhaps, to leverage the talent here or within their community, they have engaged in a partnership relationship to bring that system support in house. And so not only undoing some of those relationships, but finding new ones. The time and cost and and ultimate impact that we'll have on their ability to support students.

218

00:43:43.360 --> 00:44:02.650

Noah Sudow: So let's let's just assume, for now that some of the folks in this call may now be third party services who weren't third party services before, and we get more clarity, and and we're confident that they are. And then we get to September one. What what has to happen? What does it actually mean to be a third party service, or what do you have to do? Is what's the process look like?

219

00:44:02.650 --> 00:44:05.790

Noah Sudow: Maybe i'll toss that over to you, Dennis and Charlie first.

220

00:44:06.420 --> 00:44:07.220

Dennis Cariello: Yup.

221

00:44:08.680 --> 00:44:21.720

Dennis Cariello: Yeah. So I mean just to set up. There are a couple of things that that make life different for you. I. The the first is, you are now a regulated entity, so the Department can come knocking on your door

222

00:44:21.740 --> 00:44:37.230

Dennis Cariello: and have program reviews of your enterprise, and you know what they send you letters you've got to respond. And where is now? Everything was through your client. If they had questions now, it's a much more direct relationship.

223

00:44:37.230 --> 00:44:54.460

Dennis Cariello: and I I expect, given the information gathering piece here, and certainly with regard to opms. If you look at some of the questions on tuition sharing. I wouldn't be surprised. The Department directly asked questions of you on how you pay people, and so forth, to ensure compliance with incentive comp and at the very least.

224

00:44:54.500 --> 00:44:55.980

Dennis Cariello: The second

225

00:44:56.250 --> 00:45:11.750

Dennis Cariello: big thing is, which is not a particularly big thing. But your contract is going to have to be revised. There is literally required length that has to be in the contracts to cover things like. What if you go out of business or go bankrupt, what data has to be ported over back to the school.

226

00:45:11.750 --> 00:45:28.160

Dennis Cariello: and if you see something, you've got to say something. So you see that the school is doing something that violates a title for regulation. You are supposed to report them to the Inspector General, which again, there is a certain level of comfort for that. But I think most people have to deal with it, you know, can do so intelligently.

227

00:45:28.210 --> 00:45:36.340

Dennis Cariello: The the 2 other big things that I think have caused them most consternation because of the lack of clarity.

228

00:45:36.360 --> 00:45:44.380

Dennis Cariello: Our first with regard to the audit, you've got to do a compliance audit of your function. The problem here is

229

00:45:44.640 --> 00:45:52.450

Dennis Cariello: the Inspector General's Audit guide, which has been updated a couple of times, but the main one come back in 2,016.

230

00:45:53.050 --> 00:46:03.520

Dennis Cariello: It has not it? It doesn't encompass a lot of these functions. Right? So it's. So it there's a lack of clarity as to what you're being audited for.

231

00:46:03.930 --> 00:46:14.800

Dennis Cariello: which is coupled with the the lack of clarity. About what title for function am I doing? If I am speaking with students? Ms. Or on a recruitment?

232

00:46:14.970 --> 00:46:16.710

Dennis Cariello: Typically, that's not a

233

00:46:17.390 --> 00:46:27.190

Dennis Cariello: a title for functions most would know it. I think there are some restrictions You can't misrepresent things. Certainly. So. What does that mean? Do we have to do secret with my auditor have to do a secret shopper.

234

00:46:27.390 --> 00:46:45.330

Dennis Cariello: Don't know. I think there are a lot of those types of questions. They're very practical. May not very be very costly, but that cause people some some angst in there. I think the the other piece is this joined several liability which Charlie mentioned earlier.

235

00:46:45.500 --> 00:46:58.640

Dennis Cariello: I think everybody knows what joined several liability means. The problem is, we don't know what we're joined by severally liable for the Department, and some emails with me in the past and said, Well, it's only related to what you do.

236

00:46:58.910 --> 00:47:08.160

Dennis Cariello: But here we'll take an example. You do. Software that helps the school calculate a return to title 4, which is for those who don't know this. The process

237

00:47:08.340 --> 00:47:14.650

Dennis Cariello: school gets money. Student doesn't complete their education. They've got to give some of that money back. That's a return to title.

238

00:47:15.780 --> 00:47:22.270

Dennis Cariello: So there's an error in the return title 4 Right. Now the way it works is

239

00:47:22.300 --> 00:47:35.990

Dennis Cariello: the Department goes to the schools, and hey, you made an error. You got to pass this money, and then, if the school says, oh, wait that wasn't our fault. That was the Service rider. There's probably some indemnity language in the contract that then

240

00:47:35.990 --> 00:47:43.370

Dennis Cariello: it will deal with them. That's been negotiated. Maybe there's not, and that's been negotiated as well, but nonetheless, the relationship is with school.

241

00:47:43.740 --> 00:47:47.560

Dennis Cariello: Now, if the service provider is jointly and severally liable.

242

00:47:47.830 --> 00:47:57.490

Dennis Cariello: the Department could very well say, Well, look, both of you are responsible for returns to title for you the software provider. You the school.

243

00:47:58.260 --> 00:48:14.590

Dennis Cariello: hey? It's the money right? You're both responsible, and it's doubtful. The department's going to get into the nuance of like Who is really responsible? Was it an algorithm problem, or was it, you know, garbage and garbage out? The data was that, or what was the issue? Maybe you just held the money too long.

244

00:48:14.670 --> 00:48:19.820

Dennis Cariello: I think that's where it's very concerning because

245

00:48:20.000 --> 00:48:35.800

Dennis Cariello: very few people have priced that type of risk into the model. They've accounted for their identity obligations and take an insurance for it. But now this changes the the that nature of the risk which will change the pricing.

246

00:48:35.800 --> 00:48:47.300

Dennis Cariello: And I think that's where the biggest concern is, and that'd be the place where, in addition to the foreign ownership. I'd love the department to give guidance. Yeah, this is when you're going to be responsible and how we're going to deal with that

247

00:48:48.440 --> 00:48:57.340

Charlie Rose: right? And the and the question. There's one question in the guidance on this joint several liability issue, and I think what's

248

00:48:57.650 --> 00:48:58.890

created

249

00:48:59.130 --> 00:49:06.030

Charlie Rose: consternation among entities that 90. Pm. Entities that are

250

00:49:06.250 --> 00:49:18.090

Charlie Rose: potentially third party services is that the question looks a joint and several liability from the lens of the institution, not the third party service provider.

251

00:49:18.150 --> 00:49:22.730

Charlie Rose: and and specifically to Dennis's point.

252

00:49:22.880 --> 00:49:37.670

Charlie Rose: I think we need to use the comment period to urge the Department to also address the joint, and several liability issue from the lens or the perspective of the third party servicer.

253

00:49:37.830 --> 00:49:51.230

Charlie Rose: You know, to the extent that the third party servicer is jointly and severally liable for its own culpability that may have led to a title for violation. That's one thing.

254

00:49:51.310 --> 00:50:01.990

Charlie Rose: But if it's somehow jointly and separately liable just by nature of a of a relationship without any contributing conduct

255

00:50:02.050 --> 00:50:17.250

Charlie Rose: to a potential violation. That's a whole nother thing altogether. And I think Dennis's comment that for observation that that type of exposure has not been priced into any of the business models is.

256

00:50:17.250 --> 00:50:47.240

Noah Sudow: Yeah. We just got a great live question, by the way, that I think can help transition us to what's next? But i'm going to read the question, because I think it's great if the Dcl. Continues, does LED have the capacity to provide the level of oversight to the perhaps hundreds. I'll even say, perhaps thousands of Tps providers at each institution. And yeah, I i'm very curious, because we know that this is going to take a lot of work, not just for institutions and a third party services.

257

00:50:47.240 --> 00:51:12.350

Noah Sudow: but somebody at LED's actually gonna have to look at this, or may look at this. And what does that look like? How does how does this actually going to be enforced? And and maybe i'll toss it over to you, Allison, to help lead us through the next section on. I was just gonna say I think it's time to talk about what's next, and I I do want to start off, recognizing that we still have a a fair number of participants engaged with us for the last 10-+min.

258

00:51:12.350 --> 00:51:16.810

Alison Griffin: and I suspect that some of them have, I have heard you say.

259

00:51:16.810 --> 00:51:38.760

Alison Griffin: offer comment to the department way in with the department. This may be a new issue, and and even opportunity to do so. So, Dennis or Charlie, can you just give those on the line a little bit of guidance when you say their opportunities to comment or weigh in. What do you mean by that? And how how does one do so?

260

00:51:40.600 --> 00:51:51.230

Dennis Cariello: Yeah. Sure. I mean just real quick. If you. If you go to the If you go to your colleague letter, there is a link that says, you know, to

261

00:51:51.350 --> 00:52:00.330

Dennis Cariello: Yeah, we're invited to Smith comments. You can click on that, and you can. You can go through to the Federal Register publication, and and essentially

262

00:52:00.650 --> 00:52:16.010

Dennis Cariello: can wind your way to the website where you can post your comments, and it's literally that you can do it in a letter form and post your Pdf. Or you can just put it in, you know, essentially like a glorified chat, and they all get treated the same. They all get treated with the same level respect.

263

00:52:17.220 --> 00:52:21.590

Dennis Cariello: But yeah, that would be that would be it the the Portman has

264

00:52:21.920 --> 00:52:33.530

Dennis Cariello: given. I'm. Just looking here, so it's an additional 30 days that they've given. They were originally was 30 days, so I believe it. I believe the last day is you guys correct me if i'm wrong, but it's on about April sixteenth or so

265

00:52:34.910 --> 00:52:40.500

Dennis Cariello: so, but I wouldn't wait, get the comments in the department will then review them.

266

00:52:40.560 --> 00:52:48.990

Dennis Cariello: This is a new and really different process. The department does not typically solicit comment on a dear calling. and that's something you do through a regulation

267

00:52:49.040 --> 00:52:57.200

Dennis Cariello: which suggests to me that they are going to do a notice of change of interpretation related to this, but that's a separate point.

268

00:52:57.500 --> 00:53:11.980

Alison Griffin: I was gonna say that was one of my follow up questions, though. Does the does the department have to follow through on this Dcl: or do you imagine there will be further clarifications on what's been issued?

269

00:53:12.890 --> 00:53:24.070

Dennis Cariello: I would I would think there would have to be. I mean there's gonna be way too many questions, and that a part would probably serve itself in its regulatory process if it did a formal notice of change of interpretation

270

00:53:24.080 --> 00:53:31.800

Dennis Cariello: where it answered these questions in kind of a preamble format. And I say that just so, folks

271

00:53:31.810 --> 00:53:41.520

Dennis Cariello: where you've got negotiated rule making, which is a very formal process, which I think would be a very good way of doing this, but absent that

272

00:53:41.600 --> 00:53:58.890

Dennis Cariello: it seems the Department would have to issue a formal notice of change of interpretation, because the problem is literally changing its interpretation. And I know Charlie and I have gotten responses where we've got, You know, the Department says to our client, No, you are not a third party servicer, and

273

00:53:58.890 --> 00:54:17.350

Dennis Cariello: right now, most certainly our third party service are based on this, so I assume they'll formalize that process and and respond to the questions in a Federal register notice. But yeah, you should go on regulations, Gov. And and comments and give them, you know, plenty to respond to this way. We get quality guidance.

274

00:54:17.490 --> 00:54:34.090

Charlie Rose: I was gonna say real quickly, and the resource question, you know the department is one of the in terms of Budget, one of the largest cabinet agencies, but in terms of head count, it's one of the smallest.

275

00:54:34.230 --> 00:54:43.450

and you know the Department has always been urging Congress to provide it with greater resources to do its job.

276

00:54:43.510 --> 00:54:56.060

Charlie Rose: which is a pretty multi functional job, you know. Keep in mind that the Department of LED, through Fsa. Is one of the largest banks in the United States, and

277

00:54:56.500 --> 00:55:08.060

Charlie Rose: through its education, statistics, function, and the administration of student loans. It's one of the largest repositories of data in the Federal Government. So

278

00:55:08.150 --> 00:55:19.040

Charlie Rose: there's no doubt that you know the Department's resources are going to have to be expanded, to encompass. Not only this, but but many other issues

279

00:55:19.190 --> 00:55:23.570

Charlie Rose: in that regard. You know. I think

280

00:55:23.800 --> 00:55:34.830

Charlie Rose: the Department will have to prioritize issues, and it seems to me that in the administration of Tps regulations the priority

281

00:55:34.880 --> 00:55:58.080

Charlie Rose: really goes to the nexus between the third party servicer and the administration of title 4, and the closer the nexus, you know, the greater the priority and the opposite is true. So one other quick aside is that there were some questions in the chat about instructional content.

282

00:55:58.220 --> 00:56:05.080

and I think what the department is getting at there is that

283

00:56:05.390 --> 00:56:07.400

Charlie Rose: you know the the

284

00:56:07.440 --> 00:56:24.680

Charlie Rose: instructional content or the delivery of instruction is really one of the core functions of the of the triad. You know, State approvals, creditors, and the department of that's approval for the

Administration title, for to make sure that the the entity that's delivering the education

285

00:56:24.690 --> 00:56:40.300

is subject to that. So you know the instructional content and delivery focus is a way to try to bring what the Department perceives as entities providing education that aren't necessarily encompassed through the Try it.

286

00:56:40.530 --> 00:56:53.340

Dennis Cariello: I i'm sorry I just want to clarify some, so there are a couple of things in the regulatory process. It's 30 days from the day to the letter. Right? So letter was February 20, eighth.

287

00:56:53.400 --> 00:57:02.760

Dennis Cariello: I guess we march 28, so I just want to correct that. I didn't want to get people bad information there. And then there is also related to the incentive compensation piece.

288

00:57:03.110 --> 00:57:22.680

Dennis Cariello: a separate comment period, which I believe is March sixteenth, and they are also on the leaves on the eighth and ninth of March. There are listening sessions that people can sign up for if they want to comment on that as well, which again, we didn't talk about much here, but that's an equally critical issue for many institutions.

289

00:57:22.720 --> 00:57:52.720

Alison Griffin: If you will, we'll do a follow up Webinar on on incentive com but I I did I? I I don't want to lose the thread on something that came up through Charlie's comments, and that is all that is going on right now, just in the post secondary side at the department. So, in addition to what we've talked about today, you know, we have a likely, some new borrower defense to repayment regulations. We have some pending accreditation rule changes.

290

00:57:52.720 --> 00:58:12.030

Alison Griffin: We certainly have a Supreme Court decision on on borrower, on borrower debt, and so certainly a lot going on over the coming weeks and months. My final question for each of you and I'll start Dennis with you, Charlie, and then Noah, you can round us out.

291

00:58:12.030 --> 00:58:17.490

Alison Griffin: What should we be watching for? What should we be paying attention to in the coming weeks?

292

00:58:18.780 --> 00:58:20.960

Dennis Cariello: Well, so

293

00:58:21.340 --> 00:58:27.250

Dennis Cariello: game flip right, I mean. There's so gainful point, and regulations are at on the now being reviewed.

294

00:58:27.560 --> 00:58:42.180

Dennis Cariello: The and that proposed tool making is expected to come out sometime. I'm gonna say you know April May somewhere, and then we'll. There'll be a whole new comment period about that. There are some other regulations that will be a part of that.

295

00:58:42.180 --> 00:58:49.480

Dennis Cariello: including what entities have to sign the Ppa. So that that's a very critical piece. For of our institutions

296

00:58:49.500 --> 00:59:01.260

Dennis Cariello: related to that just today there was guidance about when executives have to sign the program. Participation agreement for those who don't know that's the agreement between the Department and the

297

00:59:01.270 --> 00:59:09.050

Dennis Cariello: institution, for it allows them to disperse title 4, and this would make those folks

298

00:59:09.100 --> 00:59:16.450

Dennis Cariello: personally responsible for any liabilities associated with the school, particularly if the school closes.

299

00:59:16.750 --> 00:59:29.540

Dennis Cariello: Yup. I think those are 2 really big things, I think, to watch out for in the coming months. And then I think let's not forget the Department said they're going to notice, and it's a negotiated rule making a

300

00:59:29.660 --> 00:59:34.090

Dennis Cariello: which will start sometime in November. So it's going to be.

301

00:59:34.390 --> 00:59:40.270

Charlie Rose: I mean just quickly. I I I think the big event, the Seminole

302

00:59:40.320 --> 00:59:47.700

Charlie Rose: events going to be the Supreme Court's decision, and the that case, and that

303

00:59:47.750 --> 00:59:54.140

Charlie Rose: depending on which way? That's gonna shape the Department for years to come.

304

00:59:55.070 --> 00:59:56.910

Alison Griffin: Thanks, Charlie Noah

305

00:59:56.990 --> 00:59:58.450

Alison Griffin: and I,

306

00:59:58.560 --> 01:00:28.030

Noah Sudow: you know I was gonna say I totally agree with with with both Dennis and Charlie, and sort of where you know the Supreme Court decisions lasting impact. You know on what happens with this department. I just say the the negotiated rule making side of this, and the fact that we know that you know they they were in at least initially interested in third-party services, and where that goes, and how you know the the comments and the questions that come in may relate to what what they do next. There and then the incentive conversation side of this. We know that there's a lot of pressure. I mean that in a lot of ways may have been what

307

01:00:28.030 --> 01:00:51.200

Noah Sudow: which drove this Dcl: and so, just thinking more broadly, Where does that go, and what's next? And do they attempt to do that through another dear colleague, letter, or we're in the last one, or negotiated role making, I think, is going to be is going to be really interesting, especially in the context of this. So we're going to end because I think we're right at 20'clock. But i'd say, if folks have additional questions.

308

01:00:51.200 --> 01:01:11.930

Noah Sudow: please reach out to us, You know we'll we'll share our contact information following this Webinar and the recording. But thank you so much, Charlie Dennis, for joining Alison as always, is such a pleasure to be with you. And just again, please, don't hesitate to reach out to us with any other questions we know there's a lot.

309

01:01:12.340 --> 01:01:15.090

Dennis Cariello: Thank you.

310

01:01:15.610 --> 01:01:16.660

Noah Sudow: Thanks up.

311

01:01:16.720 --> 01:01:17.380

Dennis Cariello: Yeah.