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Nonprofit Colleges, Universities Must Promptly Report 'Triggering' Events: McGuireWoods

Nonprofit higher education institutions now must report to the U.S. Department of Education the occurrence of certain "triggering" events that bear on the institution's financial strength within 10 days of the occurrence of the event.

These reporting requirements, part of the Obama-era borrower defense regulations that stalled under the Trump administration, have implications for any institution that participates in federal student aid programs. The regulations are designed to protect the Department of Education should it need to forgive student loans due to closure, fraud or misrepresentation by the institution.

The National Association of College and University Business Officers (NACUBO) released Advisory Guidance 18-05, which details the new regulations and triggering events and recommends certain steps business officers should take to ensure compliance with the new reporting requirements.

The borrower defense regulations set forth two categories of triggering events that will lead to the Department of Education re-evaluating an institution's financial standing: "automatic" and "discretionary" events.

Previously, the Department of Education evaluated a school's standing by reviewing the institution's audited financial statements, which schools provided within nine months of the end of the fiscal year. Now, the Department of Education will re-evaluate an institution's financial standing upon notice of a triggering event. An institution must provide such notice initially within 10 days of the occurrence of the event. Depending on the type of event, such as a lawsuit, an institution also may be required to provide follow-up notices.

Automatic triggering events are: (1) debts stemming from judicial or administrative proceedings or settlements, (2) borrower defense-related lawsuits, (3) other (not specified) litigation, (4) accrediting actions requiring a teach-out plan when closing (including closing a branch), and (5) gainful employment programs that could become ineligible for federal aid in the next award year.

Discretionary triggers are: (1) significant year-to-year fluctuation in the amount of Pell Grant or direct loan funds the institution receives, (2) citation by a state licensing agency for failing requirements, (3) failing a (to be developed) stress test, (4) high annual dropout rates, (5) accreditation issues, (6) financing document violations that allow a creditor to increase collateral, and (7) pending borrower relief claims or borrower defense lawsuits.

While the regulations do not provide detailed consequences for failing to report, they do provide the consequences for failing to meet required financial responsibility standards. These consequences include providing the Department of Education with a surety or letter of credit, and disclosing to students and prospective students the occurrence of a triggering event.

Business officers should coordinate with internal and external team members to put systems in place to ensure they are notified if a triggering event occurs. Such reporting systems will help promote compliance with the 10-day reporting requirement.

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June 20 2019

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