

U.S. Department of Education provides additional, albeit limited, guidance on implementation of 2016 "borrower defense to repayment" regulations

June 5, 2019

On June 3, 2019, the U.S. Department of Education (ED) [published](#) a two-page Questions and Answers (Q&A) document to provide additional guidance to colleges and universities about aspects of the final regulations often referred to as the borrower defense to repayment regulations (BDTR Regulations). Under the BDTR Regulations, institutions are required to report certain events to ED and ED is authorized to reassess an institution's compliance with ED's financial responsibility standards when certain triggering events occur.¹ The BDTR Regulations finally went into effect upon resolution of litigation challenges related to the regulations, and as described in a [March 15 Electronic Announcement](#), institutions were required to report certain events to ED by May 14, 2019. Going forward, institutions are required to report to ED the events identified in the BDTR Regulations in accordance with the specified timeline.

The BDTR Regulations related to the reporting requirements and trigger events contain broad and ambiguous terms. The June 3 guidance, which supplements the March 15 Electronic Announcement, seeks to address a few of the questions that were raised with ED as institutions prepared reports for the May 14 deadline and otherwise worked on a plan to comply with the requirements. In the June 3 guidance:

- ED confirms that the reporting requirements in 34 Code of Federal Regulations (CFR) § 668.171(h) apply to public institutions even though ED regulations provide that public institutions are deemed financially responsible based on their status as public institutions. In other words, a public institution must report to ED the events set forth in 34 CFR § 668.171(h), but ED will not use that information to recalculate a public institution's composite score or otherwise to assess whether a public institution is financially responsible. ED also states that a public institution must report an event that occurs with a related party that is included in the public institution's annual audit submission to ED.
- ED addresses the scope of the term "debts and liabilities" in the trigger set forth in 34 CFR § 668.171(c)(1)(i) and in the corresponding reporting requirement set forth in 34 CFR

¹ For a detailed summary of the BDTR Regulations, please see our previous [alert](#).

§ 668.171(h)(1)(i). It explains that judicial and administrative proceedings include proceedings initiated by a government entity, and it states that "all settlements fall under this requirement."

- ED addresses the scope of the term "other litigation" in the trigger set forth in 34 CFR § 668.171(c)(1)(ii) and the corresponding reporting requirement set forth in 34 CFR § 668.171(h)(1)(ii). It clarifies that the term has no limitations in terms of subject matter, type of claim, or amount of claim.

ED explained that in light of its June 3 guidance, institutions should submit any necessary supplemental reporting within 10 calendar days after the June 3 guidance – that is, by June 13, 2019.

The guidance is brief and not particularly illuminating, but it does affirm the broad scope of the requirements. The guidance invites institutions to suggest items that should be added to the Q&A document in the future.

We are available to respond to questions.

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