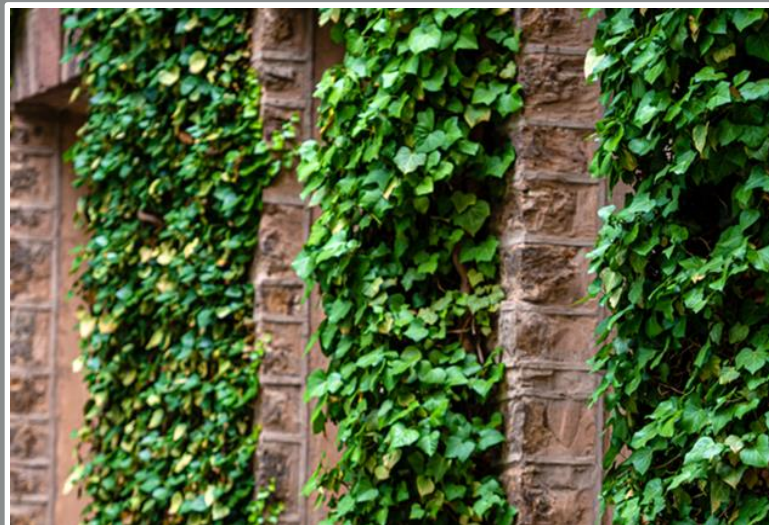


# Best Practices and Risk Considerations Relating to Summer Camps on Campus

Higher Education Webinar Series

November 10, 2021



# Housekeeping

- The Q&A Widget
- The Resource Widget
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# Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, and training services to colleges and universities.

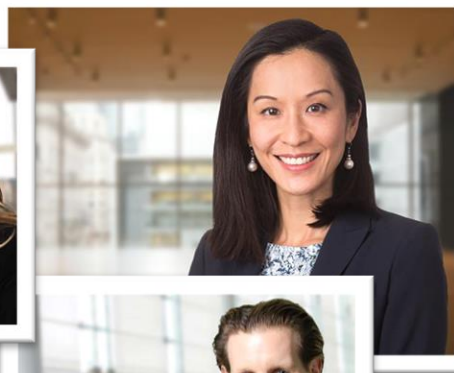




# Higher Education Practice



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# Moderator Profile

- Practice and Experience

- Assists institutions of higher education to navigate challenging legal and regulatory matters.
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# Presenter Profile

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Scott Goldschmidt

Counsel  
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# Syllabus

So, You're Thinking About Starting a Camp...

Best Practices and Considerations Before Camp

Best Practices and Considerations During Camp

Best Practices and Considerations After Camp

TC Extra Credit



# So, You're Thinking About Starting a Camp...





# Deciding on a Camp Structures

- Camps typically arise at institutions of higher education in one of two ways:
  - Institution Sponsored Camp
  - Third Party Sponsored Camp using the Institution's Facilities
- Many institutions host both institution and third party sponsored camps

# Reasons to Consider a Camp

- Mission
- Community Outreach
- Revenue
- Recruitment of Potential Students
- Retention of Employees (Particularly Athletic Coaches)
- Publicity

But, camps do create risk and exposure for institutions



# Institution Sponsored Camp

When an institution sponsors and controls a camp, it becomes another aspect of the institution's programming

Benefits	Downsides/Risks
Supports mission of institution	Administrative burden (selection of staff, background checks, liability forms, insurance, etc)
Institution keeps all revenue	No opportunity to shift risk – significant liability
Ability to institute appropriate controls	Requirement to have appropriate policies and controls in place
Beneficial publicity and name recognition	Potential for negative publicity
Control over programming	Costs to create and maintain camp

# Third Party Sponsored Camp

When an institution leases its facilities to a third party to run its camp on the institution's premises

Benefits	Downsides/Risks
Institution receives some revenue	No control over camp, staff, or campers
Risk shifted by contract	Liability not eliminated
Smaller administrative burden and lower costs	No ability to institute appropriate controls
Outside exposure to campus and facilities	Limited control over programming
Limited publicity	Potential for negative publicity



# Minors on Campus

- Institutions may not set up or equipped to have a significant number of minors on campus
- Requires considerations of different:
  - Federal and state laws that apply to minors
  - Duties/responsibilities that apply to minors entrusted to the institution's care
  - Policies and procedures (ex: policy on protection of minors and procedures regarding background checks)
  - Risks – risks specific to minors may be greater

# Best Practices and Considerations Before Camp





# Institution Sponsored Camp – Initial Considerations

## Approving Camps

- Consider who at your institution is responsible for approving a particular camp and what information decisionmakers need to see
  - For example: proposed schedules, business plans, revenue projections, or requested support from the institution

## Responsibility for Camps

- Institutional buy-in
  - Which departments at institution must be involved?
- Centralized approach: One individual or office charged with overseeing all camps
- Decentralized approach: Each camp individually responsible for its own operations

# Institution Sponsored Camp – Insurance

- Does institution's insurance cover:
  - Operation of camp for minors (non-University students)
    - Property
    - Comprehensive general liability
    - Worker compensation: owner/officer options
    - Health insurance for the owner, staff, and campers
    - Personal property
    - Vehicle liability
  - Sexual misconduct/molestation for minors
  - Business interruption



# Institution Sponsored Camp – Staffing

## Staff screening process

- Screening applicants for positions that involve access to minors is one of the most effective ways to mitigate risk
  - Consider state law screening requirements, whether paid or unpaid
- Support from institution's HR department?
  - Screening levels should increase in accordance with the employee or volunteer's level of access to children

# Institution Sponsored Camp – Staffing

American Camp Association [Standards at a Glance \(2019 Edition\)](#) suggests that camps require:

- a criminal background check,
- at least two references,
- and a personal interview for all new staff based on camp property.



# Institution Sponsored Camp – Staffing

## Background Checks

- Check (and follow) state law requirements
- If not prescribed, consider whether all individuals require a background check or only those that interact with minors
  - At minimum, consider [DOJ Sex Offender Check](#) for all
- Comply with applicable state and federal laws (ex: Ban the Box or Fair Credit Reporting Act).
- Consider how often checks must occur for returning employees
- Consider what answers on an application or results from a background check would be considered disqualifying

# Institution Sponsored Camp – Staffing

## Interview and Reference Checks

- Particularly useful for students without work history
- Goal is to ensure selection of suitable individuals to work with minors
- Use institutional resources when possible
  - Professors or advisors for reference checks
  - HR for interview and hiring processes



# Institution Sponsored Camp – Staffing

## Employment and Payroll Considerations

- Appropriately classify counselors and staff as employees, independent contractors, or volunteers
- Understand payroll processes and appropriate support is in place
- If considering using stipends, take care to follow applicable laws
  - Housing stipend

# Institution Sponsored Camp – Minors

## Protection of Minors Policy

- Establishes guidelines and procedures to protect minors and provide guidance to individuals interacting with minors
- Many examples online – useful both in camp and general institutional context

## Training

- Protection of Minors training is critically important for individuals interacting with minors -- appropriate interactions with minors, understanding mandatory reporting obligations, spotting signs of abuse or harassment, or rules regarding social media posts



# Institution Sponsored Camp – Forms & Agreements

## Assumption of Risk

- Assumption of risk is a potential defense to claims of negligence
- Clauses should be as specific as possible and identify known hazards; avoid general language
- COVID specific language

## Hold Harmless Provision

- A provision that relieves one party of blame or liability for damages

## Indemnification

- A contractual clause to allocate risk – here, the camper/guardian promising to cover certain claims and losses

# Institution Sponsored Camp – Forms & Agreements

## Medical Acknowledgement and Consent

- Certifies that the camper can safely participate in the camp
- Consent for medical treatment and care in the event of an injury

## Photography and Video Release

- Obtain a release if the camp is planning to take or post photographs or video

## Cancellation

- Under what circumstances can the camp be cancelled or dates changed?
- What are applicable refund policies?



# Institution Sponsored Camp – Forms & Agreements

- Enforceability is dependent on state law
- If under 18, the campers guardian should sign as well
- If using electronic signatures, make sure to understand and abide by relevant federal and state laws and regulations

# Institution Sponsored Camp – Payment

## Method of Payment

- Will cash, check, and credit card all be accepted?
- PCI DSS compliance standards
  - Consider using institution payment apparatus

## Revenue

- Does camp get to keep revenue or is revenue deposited into a general fund for the institution?
  - How do revenue arrangements affect camp budgeting?



# Institution Sponsored Camp – Training

In addition to specific training regarding protection of minors, camp staff should receive training on:

- Rules and expectations
- Emergency protocols and emergency contact information
- Illness and injuries
- Missing camper protocols

Compliance with all trainings should be tracked and monitored

# Institution Sponsored Camp – Vendors

Perform due diligence on any vendors selected, particularly if vendors have any access to campers

- Particularly safety re transportation

Ensure appropriate contractual terms are included



# Institution Sponsored Camp – Drop Off/Pick Up

Policy can depend on age of campers

Designated area for pick up/drop off:

- Photo ID
- Staff to greet camper
- Approved individuals permitted to pick up

Additional forms/releases if camper permitted to walk home or take public transportation

# Third Party Camps – Initial Considerations

## Approving Camps

- Consider who at your institution is responsible for approving a particular third-party camp and what information decisionmakers need to see.

## Prudential Considerations

- In addition to the business terms of the agreement, there are several prudential and reputational issues consider before approving an third party organization
  - Certain camps may be controversial, not worth the hassle, or wear and tear on facilities
  - There also may be a benefit to having a certain camp on campus, even if revenue margins are not ideal (for example, an engineering camp for high school students that showcases your facilities)



# Third Party Camps – The Agreement

- The agreement covers the relationship between the institution and the third party sponsoring the camp
- Institutions of higher education typically try to draft agreements to transfer as much risk and liability as possible to the third-party organization
  - To avoid confusion and giving campers the mistaken impression that the institution runs or sponsors the camp, consider prohibiting the third party's use of the institution's logo, mascot, trademarks, or other indicia of the institution
- Regardless of how much risk is transferred, there is still risk to the institution for what happens on its campus

# Third Party Camps – The Agreement

## Scope of Agreement

- Describe with specificity the details of the arrangement:
- Use of specific facilities (if only the football field is to be used, do not reference the entire athletics complex)
- Specify the purpose of the use
- Include dates and times when use is permitted

## Care of Facilities

- Ensure the third party agrees to take good care of the institution's facilities and not to commit or allow waste or nuisance to be committed



# Third Party Camps – The Agreement

## Property Damage

- Outline who is responsible for property damage, up to and including replacement costs

## Hold Harmless and Indemnification

- If applicable, include a hold harmless clause and indemnification

## Insurance Requirements

- Include appropriate insurance coverages (ex: sexual molestation), quality of coverage, and amounts
- Quality of coverage (for example A. M. Best ratings of at least A (VII) or better) is particularly important when dealing with less sophisticated parties

# Third Party Camps – The Agreement

## Fee

- Include the fee, deposit requirements, security deposits, and refund policies

## Responsibility for Campers and Participants

- Include an explanation for who has responsibility for campers and participants, including supervisory responsibilities
- Outline rules regarding minors on campus, including levels of supervision and background check requirements

## Security

- Retain discretion to remove anyone from campus in the institution's discretion
- Institute a security plan, as appropriate



# Third Party Camps – The Agreement

## Compliance Obligations

- Applicable Laws
- Institutional policies
- Specific guidelines for athletic events
- What must be disclosed to the institution and when must such disclosures occur?
- Taxes/UBIT?

## Cancellation

- By the institution vs the third party
- For convenience vs for specified circumstances
- Refund of deposit or fees

## Force Majeure

- What specific circumstances?

# Third Party Camps – Operations

If third party camp is run by an employee of the institution as an LLC

- Ensure there is clear understanding of when the employee is working for the institution and when for the camp
- Resist temptation to allow employee to use institutional administrative support for camp
- Take care when marketing camp as to employee affiliations



# COVID-19 Considerations

CDC Guidance for Operating Youth Camps: [Guidance for Operating Youth Camps \(cdc.gov\)](https://www.cdc.gov/youthcamp/guidance/index.html)

State guidance

American Camp Association COVID-19 Resources: [Camp Business Resources — COVID-19 | American Camp Association \(acacamps.org\)](https://www.acacamps.org/covid-19)

# COVID-19 Considerations

Institutional COVID-19 policies may or may not be appropriate in camp setting:

- Vaccinations of staff and students
- Testing
- PPE (masks and gloves)
- Social distancing
- Cleaning protocols
- Health screening requirements (temperature check/symptoms)

State child care guidance may apply

Subject to change depending on the circumstances



# COVID-19 Considerations

## Potential COVID-19 alterations:

- More staff to account for potentially increased leave
- Division into smaller groups of campers for activities
- Fewer campers overall to ensure social distancing
- More outdoor activities
- Reconsider safety of certain activities (ex: field trip to restaurant or baseball game; taking public transportation)
- Staggered drop-off/pick up
- Appropriate social distancing for activity/age group
- Relaxed cancellation/refund policy

# COVID-19 Considerations

## Potential COVID-19 alterations:

- Overnight arrangements
  - One camper per room; increased ventilation
- Dining arrangements
  - Prepackaged boxes or bags
- Discourage sharing equipment/belongings
- Staff leave policies that are flexible/non-punitive
- Encourage reporting of illness and COVID-19 symptoms
- Podding groups
- Hand washing breaks/ hand sanitizer stations



# COVID-19 Considerations

## Establish a plan for COVID-19 exposure

- Camper or staff member in close contact with a person who is positive for COVID
  - Requirement to take test or complete quarantine period
- Camper or staff member awaiting COVID-19 test results

## Doctor's note for non-COVID illness

# COVID-19 Considerations

## Establish a plan for COVID-19 exposure

- Contact tracing
- Notice to campers and families
  - Clear and frequent communication important
- Medical staff/local health provider involvement
- Notice to the institution
- Possible to reschedule camp?



# Best Practices and Considerations During Camp



# Institution Sponsored Camp – Camp Rules

## Rules and Considerations for Campers

- Camp rules can provide structure and set expectation for both campers and guardians. Potential topics to consider include:
  - Behavioral requirements
  - Free time
  - Cell phone usage
  - Dorm rules (if applicable)
  - Prohibiting weapons and drugs
  - Rule violations, dismissal from camp, and refunds (if any)
  - COVID-19 specific rules
- Some institutions state explain that campers must abide by institution's code of conduct
- Recommend having campers and legal guardian sign rules



# Institution Sponsored Camp – Activities

- Certain activities carry more risk than others
  - For example, classroom instruction vs off-site field trip; or a kickball game vs free swim
- Be deliberate in choices for activities, understanding and accepting risk each may pose
  - Take COVID-19 into account. Be flexible

# Institution Sponsored Camp – Health Information

- Compliant with applicable law, institutions can ask for a Health Information Form so camps can prepare to accommodate disabilities and be aware of allergies and medications
  - Narrowly tailor question and only ask for information you need
  - Ensure confidentiality of information
  - Have a plan to destroy sensitive information



# Institution Sponsored Camp – Medications

Camps must consider how to address storage and administration of medications

- Will the camp have access to a nurse or trained medical professional?
- Where will medication be stored / what medication will be in personal possession of campers (rescue inhaler/EpiPen)
- Age of campers

## State specific questions

- Does your state require a policy? If not required, should your camp consider one?

# Institution Sponsored Camp - Accommodations

## Disability Accommodations

- State and federal law (the Americans with Disability Act and Section 504 of the Rehabilitation Act of 1973) may govern disability accommodations
- Consider appropriate accommodations process and procedures
  - If possible, ask for help from trained institution staff



# Institution Sponsored Camp – Scenarios

- Conducting tabletop exercises for some common situations that occur during a camp can help staff respond and make appropriate decisions in real time.
- How would your camp handle:
  - An individual that is not the camper's parent or legal guardian asking to pick up the child mid-day
  - A camper goes missing
  - A child needing emergency medical treatment
    - Do you know where the nearest medical facility is located?
    - If you are unable to reach a parent, can the camper receive medical treatment?

# Institution Sponsored Camp – Scenarios (Cont.)

- An emergency
  - What is the camp's emergency plan?
  - Who contacts parents and the institution?
  - Who is in charge?
- A camper violates a rule of conduct
- A parent is late for pick-up at the end of the day
- A camper goes into anaphylaxis after a bee sting
- You learn that one of your counselors has been giving gifts to campers.
- A camper refuses to participate in the scheduled activities



# Third Party Camps – Considerations

- Understand appropriate level of oversight (and distance) between the institution and the camp
- Make sure the institution and third parties are aware of appropriate points on contact
- Review and understand rights of institution under the contract and obligations of the camp
  - Make sure the camp is providing the services they said they would

# Third Party Camps – Scenarios

- How would your institution handle:
  - Needing to cancel the camp because of an emergency
  - Request from camper for disability accommodation
  - Negative media reports based on the camp
  - Request from third party to alter the terms of the agreement (ex: additional facilities or reduction in the number of days)
  - Report of injury
  - Lost camper
  - Damaged property
  - Report of harassment from camper or counselor



# Legal Issues

- Legal issues arise regardless of whether the camp is run by the institution or a third party
  - Have a plan in place – try to anticipate scenarios
  - Follow policies and procedures
  - Contemporaneously document issues
  - Consult counsel as necessary

# Best Practices and Considerations After Camp





# Considerations After Camp

- After each camp term, consider reviewing the following:
  - Problems and issues that arose
    - Near-problems can be best opportunities to make changes
  - Paperwork
    - Employment agreements and policies, background checks, camper forms and agreements (for institution sponsored camps)
      - Background checks
    - Agreements (for third-party camps)

# Considerations After Camp

- Policies and procedures
  - Camp rules
  - Camp administration
  - Security
  - Training
  - Emergency protocols
  - Payment procedures
  - Insurance
- Tabletop exercises
- Risk assessments/audits



# Record Retention

- Record retention schedule
  - Certain document should be kept for the length of the relevant statute of limitation
    - Unanticipated claims may arise well after the end of camp
  - Other (confidential) documents may need to be destroyed after the camp period

# TC Extra Credit





# TC Extra Credit | REGucation (our blog)



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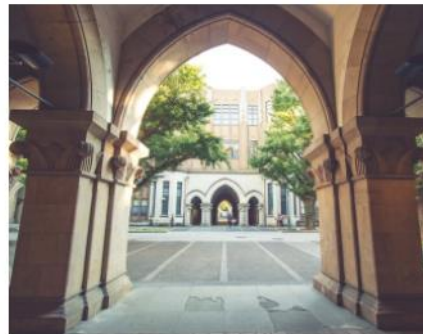
## CONTRIBUTORS



Scott Goldschmidt

## HEERF audit guide and webinar recording now available

[Scott Goldschmidt](#) [Jayna Marie Rust](#) May 17, 2021



We're delighted to share a recent article and webinar aimed at helping institutions understand the compliance requirements found in the U.S. Department of Education's Office of Inspector General "Guide for Compliance Attestation Engagements of Proprietary Schools Expending Higher Education Emergency Relief Act Funds." [READ MORE](#)

## Higher Education Emergency Relief Funds reporting requirements

[Scott Goldschmidt](#) [Aaron Lacey](#) December 29, 2020



Here at REGucation, we have been closely monitoring the CARES Act and compliance



# TC Extra Credit | Webinars on Demand

## TCLE(161)

Breaking Developments in  
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Best Practices and Risk  
Considerations Relating to  
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Campus

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Recent Developments in  
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October 27, 2021 | [View Recording](#)

Note Modifications;  
Reorganizing Private  
Business; Trust Sale of  
Business Interests

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New Vaccine Mandates

October 13, 2021 | [View Recording](#)

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# TC Extra Credit | Training Series

The image shows a YouTube video player interface. The main video is titled "An Introduction to Managing Title IX Sexual Harassment on Campus" by Thompson Coburn LLP, part of the Title IX Training Series from July 2020. The video features a man in a suit and glasses speaking, with a background of a large, historic building. The video player includes standard controls like play, pause, and volume, and shows a progress bar at 0:00 / 1:17:05. To the right of the video player is a playlist titled "Title IX Training Series" by Thompson Coburn LLP, showing 6 modules. The first five modules are listed with their durations: Module 1 (1:17:06), Module 2 (46:21), Module 3 (1:27:38), Module 4 (1:18:19), and Module 5 (52:01). The sixth module is partially visible. Below the playlist, there is a recommendation for "Module 3 - Title IX" with 522 views and posted 1 month ago.

YouTube

Search

An Introduction to Managing Title IX Sexual Harassment on Campus

Thompson Coburn LLP  
Title IX Training Series | July 2020

0:00 / 1:17:05

Module 1 – An Introduction to Managing Title IX Sexual Harassment on Campus

**Title IX Training Series**  
Thompson Coburn LLP - 1 / 6

- Module 1 – An Introduction to  
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1 month ago



# TC Extra Credit | Compliance Materials

- Title IX compliance materials include comparison document showing rule changes and compliance checklist.
- Financial Responsibility Reporting Guide details BDR-3 reportable events and timeframes.



## Title IX Compliance Checklist

**Last Updated: August 2020**


On August 14, 2020, the U.S. Department of Education's new and controversial [Title IX Rule](#) takes effect. The new rule requires institutions to put into place a complex policy framework for resolving reports of sexual harassment on campus. In particular, the new rule details requirements that institutions must follow when they receive a "formal complaint" of sexual harassment, as that term is defined in the law.

To assist institutions in their efforts to comply with the new rule's requirements, Thompson Coburn's Higher Education Practice created this compliance checklist. This self-audit tool is designed to assist institutions as they review their policies for compliance with the new Title IX rule's most significant requirements concerning the formal complaint process, and includes select quotations from the agency commentary that accompanied the new rule when it was published. Please note that this checklist is not a comprehensive review of every requirement found in the new rule. The regulation is complex, and institutions are strongly encouraged to review it directly, and to consult counsel as they work towards compliance.

Finally, we note that this checklist can be used in conjunction with Thompson Coburn's free [Title IX Training Series](#), which assists institutions to comply with the significant training requirements in the new rule. This six-part, online lecture series provides foundational training for those individuals who will be administering the new Title IX process this fall, including Title IX coordinators, investigators, advisors, hearing officers, and appeal officers.<sup>1</sup>

1. Thompson Coburn welcomes institutions to use the Title IX Training Series at their discretion, and to include the lectures on their external websites, as required by the new rule.

Thompson Coburn LLP



Financial Responsibility Reporting  
Under the **2019** Borrower Defense to Repayment Rule

**Last Updated: November 1, 2019**

On September 23, 2019, the U.S. Department of Education published the final version of its 2019 "borrower defense to repayment" rule ([the "2019 Rule"](#)). The 2019 Rule, which takes effect on July 1, 2020, revises the financial responsibility regulations that require institutions of higher education to report certain "triggering events" to the Department (located at [34 CFR 668.171](#)). If an institution fails to make a required notification under the 2019 Rule, the Department may take administrative action against the institution, to include the initiation of a proceeding to fine, limit, suspend, or terminate the institution's participation in the federal financial aid programs.

Below, we provide a chart that details the new reporting obligations. Pending further guidance from the Department, we suggest that institutions continue to submit financial responsibility notifications via email to [FSAFRN@ed.gov](mailto:FSAFRN@ed.gov).<sup>1</sup> To date, the Department has not specified any form or content for notices made under the 2019 Rule.<sup>2</sup>

Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2020	All rule citations are to 34 C.F.R.
<b>Final Judgments and Settlements.</b> The institution incurs a liability from a settlement, final judgment, or final determination arising from an administrative or judicial action or proceeding initiated by a Federal or State entity. <sup>3</sup>	Notify ED no later than 10 days of a liability being incurred under a settlement agreement, or receiving written notification of the final judgment or final determination. <sup>4</sup>	668.171(c)(1)(i)(A); 668.171(f)(1)(i).
<b>Accrediting Agency Action.</b> The accrediting agency for the institution issued an order, such as a show cause order or similar action that, if not satisfied, could result in the withdrawal, revocation or suspension of institutional accreditation for failing to meet one or more of the agency's standards.	Notify ED no later than 10 days after receiving notice of the accrediting agency action.	668.171(d)(1); 668.171(f)(1)(iv).
<b>State Agency Action.</b> The institution's State licensing or authorizing agency notified the institution that it has violated a State licensing or authorizing agency requirement and that the agency intends to withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement.	Notify ED no later than 10 days after receiving notice of the State agency action.	668.171(d)(3); 668.171(f)(1)(vi).

<sup>1</sup> The Department established this email address for reporting purposes in guidance issued on March 15, 2019, ([the "March Guidance"](#)) detailing how institutions should report events under the 2016 version of the borrower defense rule ([the "2016 Rule"](#)).  
<sup>2</sup> However, in a Questions and Answers document issued by ED on June 3, 2019 ([the "June Q&A"](#)), that agency offered recommendations for making notices under current law (i.e., the 2016 Rule). Pending further guidance from ED, institutions may find the June Q&A instructive.  
<sup>3</sup> A determination arising from an administrative action or proceeding initiated by a Federal or State entity means the determination was made only after an institution had notice and an opportunity to submit its position before a hearing official. A final determination arising from an administrative action or proceeding initiated by a Federal entity includes a final determination arising from any administrative action or proceeding initiated by the Secretary. For purposes of this section, the liability is the amount stated in the final judgment or final determination. A judgment or determination becomes final when the institution does not appeal or when the judgment or determination is not subject to further appeal." 668.171(c)(1)(i)(A).  
<sup>4</sup> The 2019 Rule does not include a specific reporting timeframe for settlements. We believe this to be a drafting oversight, and anticipate that ED will expect reporting within 10 days of a liability being incurred under a settlement agreement.



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