



August 23, 2024

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED–2024–OPE–0050

Dear Secretary Cardona:

On behalf of the undersigned higher education associations, I write in response to the Notice of Proposed Rulemaking (NPRM) regarding program integrity and institutional quality. This NPRM covers distance education, return of title IV funds (R2T4), and the Federal TRIO programs. The issues covered are not only critical to the success of students but also to the ability of institutions to offer innovative academic programming of quality while minimizing current and potential barriers.

While we understand that a final rule must be published by Nov. 1 in order for the rule to take effect the following academic year, we would be remiss if we did not express our extreme frustration with only having 30 days to offer comments. This has become a routine timeframe at the Department of Education (Department), and it is generally insufficient to prepare a response reflective of the regulation's impact. It is our request moving forward that at least 60 days is granted for comments to any proposed regulation.

Below, we provide comments on the proposed issue areas that gives us concern in the order in which they are listed.

Distance Education

Distance education is a modality of learning that has proven to be beneficial for students. Distance education allows students to experience enhanced comprehension and application of the curriculum; creates flexibility for students in when, where, and how they learn; and allows for transferrable skills to be developed for an increasingly virtual workforce.¹ Distance education can also allow students to access postsecondary education at a reduced cost, increase course variety, increase career advancement opportunities, enhance time management skills, allow for immediate feedback on

¹ Cloud, L. (2022, October 14). *Three benefits of remote learning for every generation*. Forbes. <https://www.forbes.com/sites/forbesbusinesscouncil/2022/10/14/3-benefits-of-remote-learning-for-every-generation/>

assignments, and allow for repeated access to course materials when needed.² In fact, the Department shared, in the final rule issued in September 2020, that distance education greatly benefited non-traditional students by offering flexible pacing and different models for assessing progress and potentially less debt for students.³

Due to the pandemic, most colleges and universities offered their programs 100 percent online to protect their faculty, staff, and students. As a result, a total of 84 percent of undergraduate students reported having some or all classes moved to online-only instruction in the spring of 2020,⁴ and 75 percent of undergraduate students were actually enrolled in one or more distance education courses.⁵ Recent data show that 54 percent of all students (equating to over 10 million students) are enrolled in at least one distance education course and 26 percent of all students (equating to over 4.9 million students) are exclusively enrolled in distance education courses.⁶ While the number of students enrolled in distance education courses has decreased since the pandemic, a majority of students are still enrolled in at least one distance education course.

In the NPRM, the Department is proposing to amend the distance education regulations to:

improve oversight over distance education, and ensure students are receiving effective education by expanding the definition of an additional location to include virtual locations for programs offered entirely online or through correspondence, adding a definition of “distance education course,” requiring institutions to report their students’ distance education status, and disallowing asynchronous distance education in clock-hour programs for title IV, HEA purposes.⁷

While the Department may believe that these regulatory changes will indeed benefit students, we believe that it is important to look at these changes comprehensively to include the direct impact on institutions of higher education and the indirect impact these regulations would have on students.

² Drexel University School of Education. (n.d.). *The benefits of online education in a virtual classroom*.

<https://drexel.edu/soe/resources/student-teaching/advice/benefits-of-online-and-virtual-learning/>

³ Distance Education and Innovation, 85 F.R. 54743 (proposed September 2, 2020) (to be codified at 34 C.F.R. § 600; § 602; and § 668), <https://www.govinfo.gov/content/pkg/FR-2020-09-02/pdf/2020-18636.pdf>

⁴ National Center for Education Statistics. (2021, June). *2019–20 national postsecondary student aid study (NPSAS:20): First look at the impact of the coronavirus (COVID-19) pandemic on undergraduate student enrollment, housing, and finances (preliminary data)*. U.S. Department of Education, Institute for Education Sciences.

<https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2021456>

⁵ National Center for Education Statistics. (2023). *Fast facts: Distance learning*. U.S. Department of Education, Institute for Education Sciences. <https://nces.ed.gov/fastfacts/display.asp?id=80>

⁶ National Center for Education Statistics. (2023). *Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2021 and fall 2022* [Table 311.15]. U.S. Department of Education, Institute for Education Sciences.

https://nces.ed.gov/programs/digest/d23/tables/dt23_311.15.asp

⁷ Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 F.R. 60256 (proposed July 24, 2024) (to be codified at 34 C.F.R. § 600; § 643; § 644; § 645; and § 668).

<https://www.govinfo.gov/content/pkg/FR-2024-07-24/pdf/2024-16102.pdf>

New Definition of Additional Location

In 34 CFR 600.2, the Department proposes to amend the definition of additional location to include virtual locations for programs that are offered 100 percent through distance education or correspondence courses. Of concern with this proposal is the lack of clarity around whether an institution would need to create one virtual location to host all of their academic programs that are 100 percent offered through distance education or correspondence courses or if a separate virtual location would need to be created for each program.

In the actual regulatory text, the language suggests that a virtual location could be created for each program and language in the preamble does not provide further clarification of the Department's intent. For instance, the preamble states that the Department "proposes to add a third category to this definition: virtual locations, through which institutions offer 100 percent of an educational program by distance education or correspondence courses."⁸ This is the most clarity that is provided, which does not clarify the regulatory text.

When creating an additional location, institutions must do the following:

- Seek approval from the state they are located in to establish the additional location. This will often come with a cost (as much as \$2,000 per application) as states can have an application process to approve additional locations and can charge a fee based on the control of the institution.⁹ This can become an even bigger challenge if the State Authorization Reciprocity Agreement is upended.¹⁰
- Seek approval from their accrediting agencies. A substantive change application can be required by accreditors for additional locations, which includes a fee as well;¹¹ and
- Update their program participation agreements, report the establishment of an additional location to the Department, and report any other information as required.¹²

While we appreciate that the Department articulates in the preamble that it would not require additional oversight by states or accrediting agencies for virtual locations,¹³ we believe that this language should be included in the base regulatory text, as we still fear that future administrations would not necessarily share the same perspective. In 34

⁸ Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 F.R. 60261 (proposed July 24, 2024) (to be codified at 34 C.F.R. § 600; § 643; § 644; § 645; and § 668).

<https://www.govinfo.gov/content/pkg/FR-2024-07-24/pdf/2024-16102.pdf>

⁹ For an example of this, see the application process for branch campuses and additional locations in the State of New Jersey.

<https://nj.gov/search/?q=branch%20campuses#gsc.tab=o&gsc.q=additional%20location&gsc.sort=>

¹⁰ The Department proposed in a negotiated rulemaking session to force institutions to meet the state authorization requirements of each state that it seeks to offer distance education if there are over 500 students enrolled at the institution from that state.

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>

¹¹ For an example of this, see the substantive change process for additional locations from the Higher Learning Commission.

<https://www.hlcommission.org/Accreditation/substantive-change-off-campus-activities.html>

¹² Institutions must satisfy requirements in 34 C.F.R. § 600.20; § 600.21; and § 600.32

¹³ Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 F.R. 60261 (proposed July 24, 2024) (to be codified at 34 C.F.R. § 600; § 643; § 644; § 645; and § 668).

<https://www.govinfo.gov/content/pkg/FR-2024-07-24/pdf/2024-16102.pdf>

CFR 600.10(b), the Department's authority is clear in its ability to approve, or not approve, additional locations, and we know that each administration will utilize this authority differently.

Also, we find it troubling that the Department shares that programs must be 100 percent online distance education or correspondence courses; however, it subjects institutions to creating an additional location, or potentially multiple additional locations, when the program requires in-person work. Any program that requires students to attend any of the instructional content on campus is a hybrid program and does not count as a program that is 100 percent online. Currently, reporting in the Integrated Postsecondary Education Data System (IPEDS) includes language that institutions are to still consider a program to be exclusively online even if there are requirements for the student to come to campus for orientation, testing, or academic support services. The exceptions to an exclusively online program are clearly stated in IPEDS; however, the newly proposed language uses the term "on campus or residential periods of 90 days or less"¹⁴ that could include actual instruction of the program itself. We fear that the broadening of this language could have an impact on educational programs that are truly hybrid programs and create additional compliance issues that are unnecessary.

In addition, requiring additional locations could inhibit innovation at institutions. As previously articulated, over 4.9 million students are exclusively enrolled in distance education programs and over 10 million students are enrolled in at least one distance education course. Mandating that institutions create a virtual location for essentially "hybrid" distance education programs could disincentivize these institutions from continuing the forward momentum set in place by the 2020 distance education and innovation regulations. These regulations were clearly constructed to allow institutions the flexibility to provide quality academic programming to students in the ways that best meet their needs, whether that is through distance education, correspondence courses, direct assessment, competency-based education, or subscription-model programs.

Furthermore, requiring institutions to establish virtual locations to house their educational programs offered 100 percent through distance education and correspondence courses will subject institutions to closed school discharge procedures should they restructure their online programs. Institutions that are innovative restructure their programming to either best meet the needs of the marketplace or to offer more competitive programs that students may not have access to at other institutions in their state or local vicinity. Closing a program should not count as a closed school discharge, especially if the students are able to continue their academic journey in the same program on campus. We do understand that there may be circumstances when a student is in an online program and does not have the ability to attend the program on campus if the online program closes; however, a program is not an institution and allowing for students to complete a closed school discharge

¹⁴ Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 F.R. 60284 (proposed July 24, 2024) (to be codified at 34 C.F.R. § 600; § 643; § 644; § 645; and § 668).
<https://www.govinfo.gov/content/pkg/FR-2024-07-24/pdf/2024-16102.pdf>

application for a program closure does not meet the merits, or the newly established definition, of a closed school discharge.¹⁵ Instead, the institution should consider assisting these students in furthering their educational journey in similar programs on campus or in the same programs at other institutions in which there is an established articulation agreement allowing students to receive prior credit for their completed work. The proposed change by the Department only provides further ammunition for the Department to recoup funds from institutions through a closed school discharge process.¹⁶

Given this, we do not support the proposal to mandate that institutions create virtual locations for distance education and correspondence courses.

Reporting Enrollment in Distance Education Courses

The Department is proposing to require institutions to report enrollment in distance education or correspondence courses in 34 CFR 668.41. As we understand it, this proposal came at the request of negotiators that were a part of the negotiated rulemaking committee.

As of now, institutions must report enrollment in distance education programs through IPEDS. To be exact, institutions report enrollment on the following:

- Students enrolled exclusively in distance education courses;
- Students enrolled in at least one but not all distance education courses;
- Students not enrolled in distance education courses;
- Of the students enrolled exclusively in distance education courses,
 - Those that are located in the same state or jurisdiction as the institution;
 - Those that are in the United States but not in the same state or jurisdiction as the institution;
 - Those that are in the United States but their location is unknown;
 - Those that are located out of the United States; and
 - Those that have a location that is unknown.

We fear that requiring institutions to move from an aggregate reporting structure to a student-by-student reporting structure will only invite increased data errors. The course and program delivery modalities in use today differ significantly from those before the COVID-19 pandemic. While some programs and courses remain in a wholly distance education format, many are now delivered in hybrid formats, allowing students to choose how they engage with the learning content of the program and/or course. As of now, IPEDS considers programs that combine distance education and traditional teaching methods (also known as hybrid programs) to not be distance education programs, but there is a concern that this new regulatory text could further complicate this distinction.

¹⁵ 34 CFR 685.214

¹⁶ 34 CFR 600.300(b)(13) requires institutions to accept responsibility and financial liability stemming from losses incurred by the Secretary for repayments of amounts discharged through a closed school discharge process when seeking to participate in Title IV programs.

Students often enroll in non-linear, non-homogeneous ways, frequently choosing courses offered in different delivery modalities within the same term of enrollment. Furthermore, some individual course sections/classes (i.e., the same subject, number, and title offered more than once during a term) allow students to vary their preferred delivery modality throughout the term. For instance, a student may choose to engage with some content in person and other content online, either synchronously or asynchronously, with these choices varying from one student to another in the same section/class of the course.

Given the heterogeneity in program, course, and section delivery practices within and among institutions, as well as diverse student course-taking patterns, data collected at the student level would be so varied as to limit its usefulness in aggregate analyses particularly because the data represents a snapshot in time for a student and not an aggregate of course-taking patterns and outcomes for the same students over time. Additionally, gathering student-level program and course outcome information only on students enrolled in some form of distance education, without comparable data from those not enrolled in distance education, provides no baseline for meaningful comparison.

If, however, the intent is for institutions to report only aggregate-level data on student-related distance education course and program outcomes, these data would still be limited in usefulness. For example, a universal grading standard does not exist within courses at the same institution, let alone across different institutions. Consequently, any comparison of aggregate course grades or student grade point averages at the institutional level would be nearly meaningless, and even more so when comparing between institutions. This lack of standardization further complicates the interpretation and utility of the proposed reporting requirements.

While we appreciate that this particular provision would not go into effect until July 1, 2026, we want to be mindful about the adequate amount of time it could take for institutions to update their systems and software to comply with these regulations, especially given the recent, and ongoing, delays with the Free Application for Federal Student Aid.¹⁷

The Removal of Asynchronous Learning

In 34 CFR 600.2, the Department has proposed to remove the asynchronous option for students who are enrolled in distance education courses under the definition of a clock-hour. In the preamble, the Department shared that its rationale for doing this was because it found in program reviews, and from speaking to students, that,

asynchronous learning in clock-hour programs has often consisted of playing videos, reading assignments or scrolling through pages, without the meaningful

¹⁷ U.S. Department of Education. (2024, August 7). U.S. Department of Education announces schedule and new process to launch 2025-26 FAFSA form. <https://www.ed.gov/news/press-releases/us-department-education-announces-schedule-and-new-process-launch-2025-26-fafsa-form>

interaction with the coursework or instructors that is necessary for mastery in hands-on job training programs and the development of important skills such as critical thinking and effective communication.¹⁸

We believe that this concern is largely misguided. First of all, institutions are already accountable internally and to their accreditors for the content and rigor of coursework, online, offline, synchronous, and asynchronous. To simply assume that all asynchronous courses are without merit is administrative overreach and not supported by rigorous evidence. Secondly, the implicit comparison that all synchronous and in-person classes are of higher quality is specious on its face. Finally, in regard to in-person and synchronous courses, the proof of learning is not seat time but evidence of competence in assignments and exams. Even at a cursory glance, this suggestion discounts the benefits of millions of students engaged in effective, rigorous, and learning experiences customized to their needs.

While we can understand that there are students who would not benefit from an asynchronous distance education course, there are also students who would benefit from this type of learning and do.¹⁹ As previously articulated, distance education is meant to provide a student with flexibility in their schedules and this includes a student engaging in material individually at their own pace. In the 2020 distance education and innovation regulations, the Department articulated that asynchronous education:

allows students to design their own learning schedules around the demands of work and family that often interfere with class activities offered only at prescribed times. This flexibility can also greatly benefit students with health concerns for whom participation is contingent upon treatment schedules and feeling well enough to perform required tasks. The individual pacing made possible by asynchronous learning allows for a more tailored educational experience that promotes mastery of subject matter over attendance in scheduled activities. Moreover, the availability of asynchronous learning allows for mixed model learning reflective of non-title IV eligible programming with theory learned asynchronously and specific practical tasks through synchronous instruction.²⁰

In addition, the definition of distance education can be found in *Higher Education Act of 1965* in Section 103(7). Congress intentionally included synchronous and asynchronous in the definition, affirming that both methods can be effective. However, the Department is now proposing to decrease access to postsecondary education by not allowing asynchronous courses to count toward student aid eligibility for students. If a

¹⁸ Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 F.R. 60262 (proposed July 24, 2024) (to be codified at 34 C.F.R. § 600; § 643; § 644; § 645; and § 668). <https://www.govinfo.gov/content/pkg/FR-2024-07-24/pdf/2024-16102.pdf>

¹⁹ MIT Open Learning. (2021, December 15). *The 5 benefits of asynchronous learning*. <https://curve.mit.edu/5-benefits-asynchronous-learning>; NJIT Online Programs. (2024, February 6). *6 advantages of asynchronous learning*. <https://online.njit.edu/blog-posts/6-advantages-asynchronous-learning>

²⁰ Distance Education and Innovation, 85 F.R. 54752 (proposed September 2, 2020) (to be codified at 34 C.F.R. § 600; § 602; and § 668). <https://www.govinfo.gov/content/pkg/FR-2020-09-02/pdf/2020-18636.pdf>

student chooses to take an asynchronous course, they are no less deserving of financial aid. There are many students who are working parents and are unable to attend a class set at a certain time of the week. They should not be forced to pay out of pocket for an option that may truly be best for them. Clock-hour programs offered through distance education undergo rigorous screening and are of the same quality as other Title IV-eligible programs. The Department's notion that taking attendance somehow ensures learning is a disservice to students and innovative programs at campuses across the country.

Given this, we do believe that asynchronous learning should continue to count toward the eligibility for student aid for students who may need to utilize this option.

Return of Title IV Funds

In the NPRM, the Department is proposing to amend the R2T4 regulations to:

help withdrawn students repay outstanding Direct Loan credit balances, increase the accuracy and simplicity of performing R2T4 calculations, address unique circumstances for what constitutes a withdrawal, clarify that distance education programs are attendance taking, and codify longstanding policies into regulation.²¹

In this proposed regulatory change, the Department makes further amendments to require institutions to take attendance in distance education courses. The Department stated that it believes it is illogical to not require an institution to use a student's actual last date of attendance as a withdrawal date when certain mechanisms may already be in place to do so. Of concern is the need for institutions to track the exact dates of attendance and withdrawal for students who are enrolled in distance education courses.

For the sake of R2T4 calculations, mandating that faculty and administrative staff attempt to monitor the exact days of initial attendance in distance education courses can prove to be a difficult task. To implement a regulation with this change would force institutions to track students individually and further potentially complicate their R2T4 calculation, subjecting these institutions to punitive actions by the Department. If institutions are going to be required to monitor students to a greater degree, then we believe the Department should provide them with the necessary tools and equipment to do so successfully. In addition, to subject distance education courses to this level of scrutiny further differentiates these types of courses from in-person courses that would not be required to take this level of attendance.

Furthermore, we believe that the requirement for institutions to document a withdrawal date within 14 days after the last date of attendance should be lengthened to 24 days. We fear that 14 days is not an adequate amount of time given that an

²¹ Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 F.R. 60256 (proposed July 24, 2024) (to be codified at 34 C.F.R. § 600; § 643; § 644; § 645; and § 668).
<https://www.govinfo.gov/content/pkg/FR-2024-07-24/pdf/2024-16102.pdf>

illness, or personal obligations, could impact the attendance of a student in a 14-day period.

Conclusion

Again, the comments we have provided are comments based on areas of concern in the regulations. Any aspects of the NPRM that were not commented on should not be seen as an automatic endorsement or official support.

Thank you for your time and consideration of this request.

Sincerely,



Ted Mitchell
President

On behalf of:

Achieving the Dream
ACPA-College Student Educators International
American Association of Colleges and Universities
American Association of Colleges of Nursing
American Association of Colleges of Osteopathic Medicine
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Career Education Colleges and Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council on Social Work Education
EDUCAUSE
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

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