Docket ED-2024-OPE-0050
Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs

Miguel Cardona
Secretary of Education

James Kvaal
Under Secretary of Education

U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Dear Secretary Cardona and Under Secretary Kvaal,

On behalf of WCET (the WICHE Cooperative for Educational Technologies) and SAN (the State Authorization Network), we submit this comment regarding proposed changes to regulations for Distance Education and Return to Title IV for distance education courses from the recent Notice of Proposed Rulemaking (Docket ED-2024-OPE-0050).

About our organizations:

- WCET advances learner access and success through postsecondary digital learning for a more equitable world. Our nearly 480 members are institutions, state agencies, non-profit organizations, and corporations located in all fifty states. Our main activities involve members sharing their emerging and effective practices and our joint advocacy for effective policies. WCET was founded in 1989 as a unit of WICHE, the Western Interstate Commission for Higher Education. (wcet.wiche.edu)

- SAN serves institutions and organizations nationwide by providing training, support, and opportunities to collaborate to navigate regulatory compliance for out-of-state activities of post-secondary institutions. As a membership-based unit of WCET, its 173 members allow 940 U.S. institutions to participate in SAN activities. SAN was founded in 2011 as a division of WCET. (wcetsan.wiche.edu)

Together, WCET and SAN are the premier organizations in following and advocating on federal and state regulations for distance and digital education. We educate our members about compliance and urge them to adhere to state and federal regulations.

We understand the intent of the proposals is to protect students as consumers as well as the Department’s Title IV financial aid expenditures. These are goals that we strongly support. These proposals include some elements that we back, a few that are somewhat concerning, or some that we strongly oppose. Even so, we hear the Department’s desire for improvement. Where we can, we offer alternative pathways to balance student protection with negative impacts on students, faculty, and institutions.
We followed all of the negotiations and assisted negotiators in developing proposals. We have concerns about the steps in developing the proposed language, themes that we see in the proposal, and the impact they might have if implemented:

- **Bimodal Thinking** – The Department seems to often use an outdated framing in thinking about how colleges and universities currently operate. Discussions and proposals often assume that an instructional modality is either distance education or it is not. Actually, faculty employ every combination of in-person and online modalities imaginable. Using digital technologies is more of a spectrum rather than separate buckets. Accrediting agencies have generally taken a more holistic approach in understanding that quality and student protections should be the same for all students...regardless of modality.

- **Lack of Evidence** – Despite repeated calls for data from negotiators, the evidence of student harm or institutional noncompliance was minimal. This is concerning to us, given the real-life impact of these proposals.

- **Punish the Innocent** – There is an overarching theme in this round of negotiations. A few institutions are found to be in non-compliance. A large number of institutions are forced to pay the toll.

- **Distance Education is “Less Than”** - Distance education was treated by some negotiators and by some of these proposals as an inferior modality. On behalf of more than half of postsecondary students who enroll in at least one distance education course, we respectfully disagree. Our members do it well every day. We know better.

Finally, we know that arguments of institutional burden fall flat with the Department. We tend to avoid such arguments but are forced to do so given the magnitude of costs and effort that the proposals will require. The Department’s cost estimates for implementing the proposals are extremely disturbing. The Department punts on what will be a costly data collection proposal and consistently calls another a “simplification” when it is a massive increase in work. Given the growing financial pressures on colleges, students will be harmed. Increased costs will be passed on to students. Additionally, the elimination of asynchronous instruction for clock-hour programs will have the biggest impact on first-generation, adult, and marginalized students.

**ATTENDANCE TAKING**

34 CFR 668.22 Treatment of title IV funds when a student withdraws. Require attendance-taking for distance education courses.

Problem as Expressed by the Department:
Institutions are to determine the last date of attendance for a student who withdraws from an institution without notice. For distance education students, the institution is required to provide evidence of the student’s last date of academic engagement (e.g., taking a test, submitting a paper, participating in an online discussion about course content). Logins or traditional attendance taking indicating mere presences do not count in determining the last date. We understand the Department is concerned that:

- some institutions are not properly calculating the last date of attendance, or
- some institutions set the last date of attendance so that they experienced a financial gain.
The Department: “seeks to: (1) help withdrawn students repay outstanding Direct Loan credit balances; (2) increase the accuracy and simplicity of performing R2T4 calculations...”

**Solution Proposed by the Department**
The Department proposes to “require an institution to take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program.”

**Support of the Goals of the Department**
We support the goals of the Department to protect students and Title IV financial aid funding. The Department should ensure that institutions are properly reporting the last date of attendance and are not gaming the system for their benefit.

**Our Concerns**
In current regulation, attendance-taking is required in only three cases: 1) The institution is required to do so by an outside entity (e.g., accreditor), 2) The institution has internal requirements to do so, or 3) Attendance-taking is the only way to meet an institutional or outside entity requirement. Attendance-taking is now required only where it is already required or is self-imposed.

With this proposal, the Department veers sharply from its historic view of attendance-taking programs or institutions. Unlike the other attendance-taking categories, this proposed requirement is not externally required or self-imposed. It is required by the Department. Not only are they imposing this requirement on institutions, but the result is also a massive expansion of the number of courses, faculty, and students who will be affected. As evidence of the great number of students involved, in its Fall Enrollment 2022 survey, IPEDS reported that 54.3% of all postsecondary students enrolled in at least one distance education course 1.

This is also another example of distance education being treated differently than on-campus or hybrid modalities. A stated concern (without evidence) was that distance education students could easily withdraw without notice. That would also be true of many non-distance students, such as commuters, low-income, or first-generation students. Following the Department’s logic, they should also be subject to attendance-taking.

This is another example of the Department having failed in providing institutions with proper guidance and lacking in the ability to ensure compliance. As a result, the proposed solution dwarfs the scope of the problem.

In addition, the attendance-taking proposal is riddled with unsupported assertions and false assumptions:

- **Assertion on the scope of the problem.** The Department cited instances of non-compliance or institutions reporting last dates that benefitted them financially. During the rulemaking sessions, negotiators repeatedly requested statistics on the number of institutions in non-compliance. Next to no data was provided by the Department. In talking to institutional personnel or those from other organizations, it was rare for them to have

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been cited or, even, heard of anyone cited for non-compliance in reporting last date of attendance.

- **Assertion on the magnitude of distance education withdrawals.** In the NPRM, the Department says that “students in distance education programs might not formally withdraw since they are not on campus.” No data is provided, and we question this assertion, especially for the large number of commuter institutions that face similar problems with transient students.

- **Assertion of unstated regular and substantive interaction (RSI) requirements.** The Department says that “distance education requires regular and substantive interaction between the student and instructor, and for title IV, HEA purposes, institutions are required to monitor a student’s academic engagement when a student is learning through distance education.” We follow all the Department has written on RSI and this is a novel interpretation of the word “monitor.” RSI has always been exclusively focused on the actions of the instructor. The only exception was added in 2019 rulemaking when substantive interaction became required “upon request by the student.” While the faculty and institution are required to monitor student academic engagement at no point were they required to archive every instance of academic engagement. Yes, they must provide evidence of last date of attendance, but that is a far cry from the archival processes required for this proposal. RSI was not an issue in this negotiation. The Department is redefining RSI parameters to justify this proposal. Doing so is outside the scope of this round of negotiations.

- **Assertion in the cost estimates that half of the institutions are already in compliance.** We have presented virtually and in person numerous times on this proposal. Except for a few institutions (e.g., fully online, already attendance-taking for other reasons), the vast majority told us that compliance would be a major lift.

- **Assumption on how institutions acted on this novel interpretation of RSI monitoring.** The Department thought most institutions were archiving every instance of academic engagement. In our discussions with institutional personnel, that is not the case.

- **Assumption that every institution has only one LMS and that all monitoring is done in the LMS.** Many larger institutions have more than one LMS. Given academic freedom, some courses operate outside the LMS and use alternative and effective methods for monitoring student progress.

- **Assumption that all distance education courses are online and use an LMS.** There are still some courses that use old-school room-to-room videoconferencing systems using synchronous direct instruction. The faculty successfully track student progress (as they do in an in-person course) but may or may not use an LMS.

- **Assumption that institutions cannot supply accurate last date of attendance without archiving every instance of academic engagement.** In our discussions with institutional personnel, they work hard to provide accurate documentation. But that work is minor in comparison to the archival requirements implied by this proposal.

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2 U.S. Department of Education, *2023-24 Federal Student Aid Handbook, Volume 5, Withdrawals and the Return of Title IV Funds*, p. 52. This section covers “Documenting attendance when students are enrolled in distance education courses.” The requirements are only that an institution must “document a student’s withdrawal.” There is no indication of a requirement to document all instances of student academic engagement.
The most outrageous assertion made by the Department was the claim that the proposed change would “simplify” the last date of attendance process. The Department’s cost estimates extremely underestimate the effort required. The Department says that there would be a one-time burden to “add attendance taking to the system” and “expects that this would require an average of 10 hours per institution as a one-time burden.” In discussion with policy leaders at the National Association of Student Financial Aid Administrators (NASFAA) and the American Association of Collegiate Registrars and Admissions Officers (AACRAO), there is much more work that needs to be done.

Additionally, we have presented on this topic to numerous institutional groups. The feedback from those audiences is that only the small number of fully online or attendance-taking institutions would not be affected. Everyone else worried about the enormous additional work required to ensure compliance. They cited numerous additional concerns including:

- Having to capture every instance of academic engagement in the LMS or other software.
- Having to create new connections between the LMS and financial aid systems.
- Having to address this requirement across multiple LMS systems at large institutions.
- Developing and disseminating institutional policies and procedures on how to implement this requirement.
- Developing and offering faculty and staff development on how to implement this requirement.

We also conducted an unscientific poll of WCET and SAN members to double-check our perception of the scope of the problem. Of the 177 respondents...

- 26.0% reported that all of their distance courses are attendance-taking in the way described in this proposal. In the Department’s cost calculations, they estimated that 50% of institutions are already attendance-taking for their distance education courses.
- A responder from a large public university taking the poll commented: “The amount of cost and effort necessary to establish systems for this level of attendance taking outweigh the proposed value of the data that would be obtained as a result.”
- A public university faculty person commented: “I am a teacher and have taught in both F2F and online classrooms... I can assure you students do not attend large F2F lectures for weeks on end and do not drop courses just as they do in online courses. The mode of delivery does not influence this behavior.”
- A comment from a private university: “While I am fairly confident that instructors eventually enter assignments, I am positive that instructors don’t enter this info on an immediate basis. I laughed when I saw the feds say that it would take a total of 10 hours to set up the LMS for this requirement. It will take longer than 10 hours to just sent the emails on explaining the requirement, why we need to do this, etc. This does not include the time for installation, testing and integration of this feature in an LMS plus providing training (on an ongoing basis) on the use of this feature.”
- An insight from a community college: “I personally find ED’s approach to this issue a striking contrast to books and supplies. Both to a large extent raise questions around faculty control of their courses, but even that aside in the books case ED is recognizing that an outside corporation is selling a product that creates cost to students and saying schools are bad for imposing it on students and that it should be a matter of student choice, even if that approach ultimately raises not lowers cost. Here ED is effectively saying that all distance ed
courses need to run through a 3rd party product, and a fairly high end version at that if it’s going to have the bells and whistles to do what ED thinks it can do, and cost and even student choice be damned."

In brief, this “simplification” is much more work to obtain the same last date of attendance engagement artifact as results from the current process. Currently, the workload for determining the last date of attendance is limited to a few faculty and staff who are seeking the engagement artifacts for a small set of students. This proposal expands who is involved in the calculation and the workload dramatically. Every faculty member will be involved in financial aid documentation, along with IT, registrars, and the financial aid office. As a result of these faulty assertions and assumptions, the Department’s calculations of the time and cost for implementation are drastically underestimated. And it appears that compliance is currently being successfully accomplished at most institutions. Faculty time can be better spent on instruction and supporting students.

Finally, this proposal follows an overarching theme of this round of negotiations. A few institutions are found to be in non-compliance. A large number of institutions are forced to pay the toll.

Our Suggestion
According to the 2023-24 Federal Student Aid Handbook, Volume 5 states under “Documentation of a withdrawal date”: “A school must document a student’s withdrawal date and maintain that documentation as of the date of the school’s determination that the student withdrew. The determination of a student’s withdrawal date is the responsibility of the school, not the student. A student’s certification of attendance that is not supported by institutional documentation is not acceptable.”

The responsibility of the institution is clear. The Department should not dictate the exact method of compliance, as long as institutions are successful in complying. However, we support the Department in insisting that institutions supply accurate documentation for each withdrawal without notice.

As an alternative, we believe that the Department should develop detailed guidance, examples of good practices in complying with this regulation, and “question and answer” documents. We support meaningful fines for non-compliance. As a result, it is helpful to institutions for the Department to cite practices that it will flag as being non-compliant. Such documentation would assist those in charge of distance education programs to get the leadership and faculty support to ensure effective practices are followed.

This alternative will be far more cost-effective than what is proposed. In any case, this proposal will have a much larger impact on institutions than the Department has acknowledged. However, if the Department insists on adopting its proposed language, it should consider adding more time for institutions to come into compliance.

Questions

- Currently, a last date of attendance financial aid review or audit would require the institution to produce the academic engagement artifact (e.g., test, paper, discussion post) used to determine the calculation of the date of student withdrawal from a distance
education course. Does this regulation require the archiving of every artifact of academic engagement for every distance student in case the student withdraws? If yes, how long must the institution maintain that archive? If yes, are only the academic engagement artifacts for students who withdraw without notice required to be retained from year-to-year or must the information for all distance students be retained?

- Relatedly, please provide the documentation for the assertion that the regular and substantive interaction requirement to monitor student engagement requires documenting every instance of academic engagement for every student.
- We hear from our members that the proposed regulation is NOT a “simplification” of processes, and most institutions are not documenting engagement in the way the Department asserts. We firmly believe most institutions will not be in compliance as of July 1, 2025. If you move forward with the proposal and find that to be the case, how will you create an implementation timeline that allows for institutions to come into compliance?

14 DAY DOCUMENTATION OF WITHDRAWAL FOR ATTENDANCE-TAKING
34 CFR 668.22 Treatment of title IV funds when a student withdraws. Require an institution to document a withdrawal date within 14 days of the student’s last date of attendance.

Problem as Expressed by the Department
“The Department believes that 14 days is an ample amount of time to document a student’s withdrawal date when taking attendance, and therefore, we propose to codify the time frame in regulation.”

Solution Proposed by the Department
“The Department proposes to codify in regulation its longstanding sub-regulatory guidance requiring schools that are required to take attendance to determine the date that a student withdrew within 14 days from the student’s last day of attendance.” By making all distance education courses attendance-taking, the students in those courses would be subject to this 14-day requirement.

Support of the Goals of the Department
We support the Department’s interest in timely action by institutions in regard to student withdrawals, but we worry that some current proposals will harm non-traditional learners.

Our Concerns
As noted in the previous section, the Department’s proposal for tracking students in distance education courses is outside the history of which colleges or universities are attendance-taking institutions. Previously, attendance-taking was either externally required or self-imposed. It is now proposed to be required by the Department for all distance courses. This is a massive expansion of which courses are included and, subsequently, which institutions are subject to the new 14-day requirement. While this requirement may have made sense previously, there are new concerns when it is applied to the broader distance learner population.

Our concerns include:
• **Uncertainty as to how it is applied.** We are unsure about the meaning of the proposed language: “An institution must, within 14 days of a student’s last date of attendance, document a student’s withdrawal date determined in accordance with paragraph (b)(1) of this section...” The referenced section (b)(1) reads: “…the student’s withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.” If a student does not record an academic engagement activity in 14 days, is the student automatically withdrawn?

• **Regular and substantive interaction is redefined.** Even though it was not an announced topic for this round of negotiations, this change is a de facto rewrite of the definition of *distance education*[^4] and the *regular and substantive interaction* components at the heart of that definition.
  
  o The faculty member is given much freedom in determining *regular* interaction between a student and instructor, who must provide “the opportunity for substantive interactions with the student on a predictable and scheduled basis commensurate with the length of time and the amount of content in the course or competency.” During 2019 negotiations, of which Russell Poulin was on the subcommittee considering this language, the Department proposed several timeframes or time formulas. They realized that was an impossible task and settled on this more general requirement. The 14-day requirement undermines and, essentially, rewrites a definition that was not on the table.
  
  o Also, in the definition to meet *regular* interaction is the instructor requirement for “monitoring the student’s academic engagement and success...” Again, in 2019 the Department avoided setting a specific timeframe. Now the Department has set a timeframe without discussion on the academic impact. Below we outline that impact on faculty, their instruction, and on students.

• **Impact on faculty, academic freedom, and faculty contracts.** Faculty use a wide range of instructional theories and models. We doubt the Department has anticipated the faculty blow-back that they will receive:
  
  o We have heard multiple concerns about intrusions on academic freedom. Some faculty use syllabi that provide predictable and regular opportunities for *substantive* interactions but could have a longer interval between required interactions at some point in the term. Remember that *regular and substantive interaction* 2019 negotiators avoided setting specific timelines to honor differences in instructional models and term lengths.
  
  o To improve learning and to address academic integrity, some faculty have employed “authentic assessment” techniques that engage the student in real-life research or studies in the community or in their chosen profession. Sometimes these assignments take more than 14 days of research or fieldwork, and faculty guidance is not needed in the short term. Meanwhile, the instructor is available for questions, but the possible lapse in academic engagement will need to be documented. That is more work for faculty and students.
  
  o For many institutions, the terms under which a faculty member engages in instruction are set in a union or faculty contract. The legal terms of many of these


contracts are quite precise on every imaginable faculty task, whether it is preparation, instruction, outside activities, or student interaction. It is not uncommon for these contracts to treat faculty requirements equally across all modalities. It will take time to renegotiate these contracts.

- **Impact on distance students.** Distance students run the gamut, but there is a large number of them who are beyond the traditional age of on-campus students. They often have spouses, children, obligations with parents, jobs, and adult-level complications that sometimes hinder class participation.
  - Students often need an approved leave of absence for reasons such as family health issues, their own health issues, National Guard duty, or military temporary duty assignments. Faculty often handle these cases informally, but both students and faculty will need to ensure that these are documented in the system. The 14-day requirement will create more burden for students and faculty to understand, administer, collect, and archive formal leave of absence notices for students who will be gone for more than 14 days.
  - We have heard from multiple institutions that have students who do not submit an academic engagement for two weeks but return to complete the course successfully. For adults facing emergency situations, obtaining an approved leave of absence might not be at the top of their minds. Often, they can successfully complete the course. And that is a decision left to the faculty and student.
  - Some faculty use an academic model in which students can work ahead. A bright or eager student might work ahead in one class to concentrate on another (perhaps more difficult for them) course. Although they are far ahead of their peers, they would be withdrawn under the proposed regulation.
  - Similarly, the Department described their rejection of a proposal during negotiations to exempt Direct Assessment Programs. The explanation for denying that exemption included this reasoning: “Direct assessment programs offered through distance education do not pose unique attendance-based challenges that justify exemption from the requirement.” However, by the Department’s own definition of a Direct Assessment program\(^5\), it is one that “utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others.” Quite simply, that is a unique attendance-based challenge because student success is not tied to the clock or calendar. The rejection of the proposed exemption for Direct Assessment programs is one of the most ill-considered examples of reasoning in this NPRM. The Department has just valued administrative processing over learning and, thus, has missed the entire point of Title IV financial aid programs.

- **For both faculty and students, they will not be served well in short-term (5, 6, or 8-week) courses** used by many distance education programs. The 14 days seems to have the historic quarter or semester terms in mind. Especially in the 5 or 6-week courses, 14 days is too long. This was discussed at length in the 2019 Distance Education subcommittee negotiations. The Department was unable to develop an adequate response. This is why a timeframe was left out of the regular and substantive interaction requirements at that time.

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This important detail was barely discussed in 2024.

In our recent poll, one large public university responder summarizes our concerns: “…a 14-day inactivity window is very problematic. It could potentially bounce a lot of our students out, mostly due to course designs that may not have anything due within any given 14-day period...With 70K students, we will also have our share of students who drift in and out of courses either by choice or due to life circumstances. Imagine having a car accident and being unavailable for 15 days, only to come back to make up lost work and discover you have been dropped from the course. It is a terrible proposal.”

We understand that this proposal seems to make sense “on its face” in pressing institutions to act in a timely manner in processing withdrawals. And “on its face” is just that. We are concerned that this proposed regulation is based on a superficial view of how complex institutions are and how they work.

Quite simply, this is a proposal that will result in extra work as students will need to be sure to alert faculty of leave of two weeks or more. This could be difficult if the student does not fully understand the depth of an emergency at the beginning of that timeframe. Faculty will need to be timely in responding and documenting any leave of absence. In other situations, students and faculty will need to participate in “make work” check-ins. Finally, this proposal follows an overarching theme of this round of negotiations. A few institutions are found to be in non-compliance. A large number of institutions are forced to pay the toll.

**Our Suggestions**
Alternatives for the Department to consider include:

**Rescind this proposal.** If you must persist, we offer the following improvements.

- The student should be placed on warning status at 14 days with documentation of withdrawal at 28.
- The Department should honor academic choices by faculty and allow for 14-day windows of no activity if such gaps are scheduled into the initial syllabus or if it is either Direct Assessment or a competency-based education course. We understand that the Department denied the Direct Assessment exemption. Even so, we are hard-pressed to understand why the dissertation exemption is allowed, but other academic instructional models are invalidated by this rule.
- The Department should have equal concern for all students (for example, commuter students could be argued to be equally risky) and make all courses attendance-taking and subject to the 14-day requirement.
- In any case, this proposal will have a much larger impact on institutions than the Department has acknowledged. The Department should consider adding more time for institutions to come into compliance.

**Questions**

- If a student does not record an academic engagement activity in 14 days, is the student automatically withdrawn as of that day?
• If the student finally responds or submits an academic engagement activity on day 15 or shortly after the 14-day window, can the withdrawal be reversed?
• Is this 14 calendar days or weekdays? How are spring breaks, two days at Thanksgiving, single-day college or university holidays, snow (or other emergency) days, or other official non-instructional days counted?
• What is needed to document an approved leave of absence?
• Suppose that a faculty person allows students to work ahead, and the student has completed all work listed in the syllabus to date. The student is balancing course load by working ahead in one course and focusing on another. If the student is in good standing, but has not recorded an academic engagement activity in 14 days, is the student withdrawn? Concern has been raised that a student in good academic standing could sue the institution if withdrawn. How does the Department alleviate this concern?
• Suppose that an institution is in conversation with a student after 12 days and the student says that she is out due to a medical emergency, and she believes she will return in a week. The faculty person is willing to accommodate her. If she cannot submit an academic engagement activity by 14 days, but no official leave of absence is filed...is the student still withdrawn?

ASYNCHRONOUS DISTANCE EDUCATION FOR CLOCK HOUR PROGRAMS

Amending - 34 CFR 600.2 Definition of Clock Hour and 34 CFR 668.3 Definition of an Academic Year to remove Title IV aid for asynchronous clock hour distance education programs.

Problem as Expressed by the Department
“The other distance education issue the Department seeks to address with this rulemaking involves clock-hour programs, which traditionally have required considerable hands-on instruction to properly prepare students for employment in their field of study. In the September 2, 2020, final rule on distance education, the Department was persuaded that allowing for asynchronous instruction in clock-hour programs was sensible as long as it was adequately tracked through appropriate technology.” The Department cited subsequent institutional compliance lapses in its oversight and compliance work coupled with student complaints in these programs.

Solution Proposed by the Department
“The Department proposes removing these asynchronous options using distance education under the definition of a clock-hour.”

Support of the Goals of the Department
We concur with the Department that institutions must properly prepare students for employment in their field of study. We agree that institutions should be held accountable. However, we believe other regulations addressing asynchronous distance education such as a review of regular and substantive interaction as well as enforcement of existing regulations addressing asynchronous learning that the Department proposes to remove will maintain the academic engagement necessary to prepare students. We believe that the Department may not be clear in its understanding of the effective use of both distance education and face-to-face modalities within an academic program. We maintain that current regulatory oversight methods of asynchronous
distance education clock-hour programs when enforced should be considered acceptable to protect students and preserve the integrity of Title IV aid programs.

**Our Concerns**
The complete removal of asynchronous clock-hour distance education programs from eligibility for Title IV Federal Financial Aid is contrary to stated Biden administration goals to expand workforce training such as the January 2024 Biden-Harris administration commitments for workforce development in advanced manufacturing⁶.

- The proposed language to remove asynchronous clock-hour programs from Title IV eligibility exceeds the U.S. Department of Education’s authority. The NPRM overstates the Secretary’s authority with their complete removal of a form of delivery provided in the HEA and the Department more broadly through the *Department of Education Organization Act*⁷.
- Workforce program training at institutions that focus on a specific job area (e.g. welding, cosmetology, carpentry, plumbing) using the clock-hour structure for any of its coursework will be adversely affected by their inability to offer their students access to Title IV Federal Financial Aid and, thus, injuriously affect the financial viability of the school and limit access to training for the students.
- Non-traditional learners in clock-hour distance education programs, who often require a flexible learning schedule, will be detrimentally affected if students are without the opportunity for Title IV Federal Financial Aid to obtain the necessary training for critical job fields.
- This regulatory proposal does not show an understanding by the Department that academic programs may effectively use both asynchronous distance education and face-to-face instruction within the same program. While some coursework may continue to be offered by traditional hands-on instruction, there are situations where specific coursework within the program could be effectively offered by asynchronous distance education.
- The complete elimination of asynchronous distance education for clock-hour programs is an unnecessarily excessive remedy to address accountability of the programs.

**Our Concerns**
We encourage the Department to withdraw this proposal in order to preserve Federal Financial Aid for students to be trained and educated by asynchronous distance education clock-hour programs.

The Department expressed that the 2020 Federal regulation providing for asynchronous distance education, which came from consensus by the 2019 rulemaking negotiators, was deemed by the Department as putting students and taxpayers at risk. Please note that during the Winter 2024

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rulemaking committee meetings, there were many negotiator requests for data regarding the prevalence of non-compliance. The rulemaking discussions included only vague institutional examples and did not document the scope of the problem. The Department provided only anecdotal evidence of student complaints.

Additionally, in negotiations the Department said that they did see evidence of institutions that spent much time, money, and effort to be in compliance with the Department’s expectations. Department staff shared that there are software options that meet their needs.

In the NPRM analysis, the Department provided two pieces of “evidence” of “general concerns that distance education is not sufficient to provide learners with the type of “hands-on” experience:”

- One citation was an analysis by New America of another organization’s student satisfaction survey. The survey addressed student responses to programs that took place during the time of remote learning due to COVID without a clear explanation of the educational experience. It is not surprising that students forced into emergency remote learning during COVID would lament the lack of hands-on training. This experience does not reflect the planned online programs that keep tasks that require hands-on experience intact while using asynchronous learning only for didactic instruction.
- The second citation was also of COVID-era instruction. While it focused on outcomes, it was of one class at one institution with only 33 students. The asynchronous instructional methodology described is highly dubious and resembles something that happened in emergency remote COVID-era instruction. Again, it does not represent the student experience in planned online instruction.

We are dismayed to see the Department cites two research papers that are extremely limited in scope and are COVID-era studies. First, COVID remote instruction is not the same as planned online learning. Second, the populations are narrow. Third, the “instructional design” for asynchronous learning of the comparative modality study is lacking. It is clear that their findings are in no way generalizable to the intended target population of all clock-hour distance education students. As such, those citations do not support the Department’s argument in any way.

Our Suggestions

We encourage the Department to withdraw this proposal to disallow Federal Financial Aid for students to be trained and educated by asynchronous distance education clock-hour programs. If there are institutions meeting the compliance requirements, they should be allowed to persist. It is unfair and unwise to remove an instructional option based upon the non-compliance of other institutions. We understand that there are institutions that are out-of-compliance, and we urge the Department to:

1) Create and disseminate much clearer compliance guidance and standards. We heard from multiple institutions with confusion about where they might not be in compliance.
2) Provide time for institutions to come into compliance.
3) Disallow asynchronous learning only for those institutions that are out of compliance.
As we expressed in our June 4, 2024, letter to the Department, if the Department decides it needs direct evidence to measure student engagement, we recommend that those who can provide it should be allowed to continue to do so. Many institutions would unlikely be able to meet that standard, but those who have invested the time and effort to track student engagement should still be eligible to use asynchronous instruction.

We expressed in the recent letter that there are rubrics that equate the activity in a clock-hour in-person course to those taught asynchronously. We understand the Department feels that it can only trust systems that track every student for every minute. If that is the case, then we wonder why the same requirement is not placed on in-person instruction.

Questions

- If the Department moves forward with this proposal, what is the Department’s intention for students who are currently enrolled in an asynchronous distance education clock-hour program?
- What is the timeline before those classes have to be converted from an asynchronous format?
- The Department discusses in the NPRM that clock-hour programs provide job training to prepare students for employment. If Title IV aid will no longer be available to students due to asynchronous distance education courses in a program, what does the Department suggest in the alternative to offer financially viable opportunities to prepare students to obtain training and education for employment in critical job fields?
- Given the Department’s NPRM reasoning for the proposal focusing on the need for hands-on instruction, what is the Department’s concern about institutions offering asynchronous distance education courses in a program intended to provide theory, reasoning, and compliance in a field? Please note that these courses are not simply “activities” as they are critical to job knowledge.

DEFINITION OF “DISTANCE EDUCATION COURSE”
Amending- 34 CFR 600.2 Definition of distance education course

Problem as Expressed by the Department
The Department expressed two concerns that would be ameliorated by adding a definition of a distance education course:

- the ability to better assess the effectiveness of distance education in comparison to in-person instruction, and

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8 WCET, UPCEA, OLC, Quality Matters, American Association of Community Colleges, Distance Education Accrediting Commission letter to Secretary Cardona and Under Secretary James Kvaal. June 4, 2024. [https://wcet.wiche.edu/wp-content/uploads/sites/11/2024/05/Letter-on-Distance-Education-Proposals-6.4.24.pdf](https://wcet.wiche.edu/wp-content/uploads/sites/11/2024/05/Letter-on-Distance-Education-Proposals-6.4.24.pdf)

9 Association of Real Estate License Law Officials. Asynchronous Distance Education Certification Program Overview, Policies and Procedures. 2020. [https://www.arello.org/assets/DE/ARELLO_DistanceEducationP&P_Asynchronous.pdf](https://www.arello.org/assets/DE/ARELLO_DistanceEducationP&P_Asynchronous.pdf)
clarification of the term to facilitate determinations of whether institutions are in compliance with the requirement to acquire additional accreditor approval when they pass the 50 percent threshold for the number of classes offered via distance education.

Solution Proposed by the Department
The Department proposes the addition of *distance education course* to 34 CFR 600.2. Such a course would be defined as “A course in which instruction takes place exclusively as described in the definition of *distance education* in this section notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences.”

Support of the Goals of the Department
We support the Department’s proposed language and appreciate that the Department’s definition of *distance education course* closely mirrors language used by IPEDS.

Our Concerns
We do not have any concerns with the proposed definition of *distance education course*.

Questions:
The IPEDS *distance education course* definition was used as the base for this proposed addition. The only difference is adding the term “residency experiences” to orientation, testing, and academic support services as brief exceptions to the “exclusively” distance education expectation for the course.

- Orientation, testing, and academic support services are often brief and transient activities. *Residency experiences* may vary greatly in length from course to course and (possibly) from student to student in the same course. How will the Department delineate what residencies are appropriate and which are too long?
- Will the Department work with IPEDS to harmonize the definitions?

DEFINITION OF “VIRTUAL LOCATION”
Amending - 34 CFR 600.2 Definition of “Virtual Location”

Problem as Expressed by the Department
The Department expressed several concerns that would be ameliorated by the creation of a *virtual location* as a subset of the current “additional location” category used by institutions:

- the ability of a student to access closed school discharge protections should an institution suspend coursework in a distance education modality but continue coursework in a different modality,
- the need to better understand student performance in distance education courses and programs,
- the ability to determine the precise amount of title IV funds going to distance education programs, and
- the ability to determine the State where the student is located while enrolled.
Solution Proposed by the Department
The Department proposes the addition of virtual location to the definition section of 34 CFR 600.2. This addition would define virtual location as “A virtual location through which the institution offers 100 percent of an educational program through distance education or correspondence courses, notwithstanding requirements of students to complete on campus or residential periods of 90 days or less.”

Support of the Goals of the Department
We support the Department’s desire to afford distance education students with closed school discharge protections should an institution cease to offer distance education programs. We recognize that many students enroll in distance education courses and programs over face-to-face courses and programs because they are, for a number of reasons, unable to meet face-to-face. For these students, distance education courses and programs are their only pathway to a postsecondary education, and it would not be feasible to transfer from a distance education program into a face-to-face program should an institution cease to offer its program via distance education. Additionally, we have long advocated for better data associated with distance education courses and programs assuming that such data is interpreted appropriately and that all factors impacting student success, including those outside of modality, are considered.

Our Concerns
Although we support the general goals of the Department in creating a virtual location, we have a number of concerns. In its rationale for the creation of a virtual location, the Department writes about a program offered both in-person and at a distance: “the Department is unable to distinguish between the two programs for many purposes including program oversight, audits, looking at outcomes metrics, and College Scorecard program-level data, including debt, earnings, and completion.”

• During negotiated rulemaking, the Department never identified such a lengthy list of items for data collection. As a result, institutional negotiators were never given the opportunity to comment on the potential impact that such extensive data collection would have on institutions.
• If the Department is serious about wanting to better understand the impact of modality on student performance and make the comparisons it suggests, then it will be necessary for the Department to collect equivalent data for face-to-face and hybrid programs as well.
• In its assumption that the collection of the above data will allow the Department to evaluate the effectiveness of the distance education modality, the Department neglects to take into consideration that there are numerous factors that impact student success outside of modality. For example, many adult students may choose a distance education modality because of its flexibility if they are trying to balance school, work, and family obligations. Such learners may not have as much time to dedicate to academics as face-to-face students and, therefore, may have reduced outcomes when compared to students in comparable face-to-face programs. In this case, the modality of the student would not be the primary factor impacting student success.
• We believe that the Department has grossly underestimated the impact of such lengthy reporting. In its Cost of the Proposed Regulations, the Department does not provide an
estimate of the time that it would take for institutions to create a new reporting mechanism for virtual location and provide the extensive information that the Department proposes. It is at best disingenuous for the Department to move forward with such an extensive reporting requirement without publishing an estimate of the institutional burden.

Our Suggestion
Although we support the need for a virtual location for the purposes of closed school discharge and, in theory, a desire for more data around distance education, we cannot support the current laundry list of data that the Department indicates that it wishes to collect. We have grave concerns over the ability of institutions to easily provide such data without it becoming burdensome. And we certainly cannot support the collection of such data for distance education programs only. We are, therefore, recommending that institutions report virtual location enrollments only in order to allow students access to closed school discharge where appropriate without the additional program-level data the Department wishes to collect. This will reduce the burden to institutions while also ensuring that poorly designed research and improperly drawn, un-nuanced conclusions are not propagated by the Department.

Furthermore, although the Department states in its description of the proposed regulations that “the proposed concept of a virtual additional location would not require additional oversight by States or accrediting agencies,” we have already heard confusion among stakeholders regarding this point. Thus, we would urge the Department to include this expectation in the official regulatory language to reduce confusion.

Questions

- For the “on campus or residential periods of 90 days or less” exception to offering the program through distance or correspondence education, can those 90 days be non-consecutive?
- More than one of our members expressed concern in their ability to meet a July 1, 2025, enforcement deadline if this regulation were to be made final by November 1, 2024. They envision internal delays in interpreting the regulation, determining which programs meet the definition, and implementing it in their administrative systems. There may also be external delays if they need vendor help in making the changes. Therefore, would the Department consider a delay in enforcement of one year or develop a process by which an institution may seek a delay due to barriers in implementation?
- The Department acknowledges that an institution might offer the same program in multiple formats (e.g., on-campus, hybrid, distance education). How are students who change between formats to be classified? For example, a student spends a year in the distance program, as defined by the virtual location criterion. For her second year, she moves into the on-campus format of the same program. Should that student:
  - Be removed from the virtual location cohort for the second year?
  - Also be removed from the virtual location cohort for the first year? The reasoning for removing is that the student’s change of format now puts her outside the research intent for virtual location. There is fear that she would be considered a “failure” for the distance education program because she persisted outside the cohort, even though she might graduate from the same institution with honors.
In discussions with our friends at AACRAO, two questions arose:
  
  • Is this requirement designed to make a new virtual location for EACH program at an institution that meets the definition or is it a single virtual location inclusive of ALL programs at the institutions that meet the definition?
  
  • In regard to the IPEDS categorization of “institutions\(^{10}\)” for its data collection purposes, they wondered if a virtual location is to be treated the same or differently than “Online-only divisions of Title IV institutions.”

**IN CONCLUSION**

These proposed changes are significant.

The Department has vastly underestimated their impact. That is not hyperbole.

If implemented, there will be a negative impact on faculty and students that is not acknowledged in the reasoning for these proposals.

We are happy to help. We are willing to respond to questions. We eagerly await your decisions.

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