



U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue SW, 5th floor
Washington, DC 20202

August 23, 2024

Docket ID #: ED-2024-OPE-0050

To Whom It May Concern,

Thank you for the opportunity to provide comments on the Department of Education's (Department) notice of proposed rulemaking (NPRM) related to Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs. We applaud the Department's efforts to increase consumer information and protection for students, reduce and clarify complicated procedures, and expand access to students.

New America's higher education program is a team of researchers, writers, and advocates from diverse backgrounds. We are dedicated to making higher education more equitable, inclusive, and accountable so that everyone has the chance to obtain an affordable, high-quality education after high school. We are a voice for students in policy discussions dominated by institutional interests, making us well-suited to respond to this request.

Below are our comments on the NPRM, and we are happy to provide additional information if needed.

Sincerely,

Amy Laitinen (laitinen@newamerica.org)
Senior Director of Higher Education

Edward Conroy (conroy@newamerica.org)
Senior Policy Manager

Distance Education (§§ 600.2, 668.3, 668.41)

Virtual Location

We support the Department's proposal in § 600.2 to create a definition of a virtual location, where 100 percent of an educational program is provided through distance education or correspondence courses. This change will provide benefits to students, policymakers, and researchers. First, as the Department has noted, this will provide greater information to students, institutions, policymakers, and more. Currently, the data collected and reported by the Department does not distinguish between on-campus educational programs and those that are provided using fully-online learning. This prevents students, policymakers, researchers, and even institutions from understanding if outcomes are different across similar programs. For example, students cannot see if debt and earnings differ across programs. It would be beneficial to students to know how those outcomes compare when making their enrollment decisions. According to recent College Scorecard data, there are 14,383 programs where at least one, but not all, credentials in that field of study may be fully completed via distance education at that institution.¹ This information would even be helpful to institutions to inform potential changes to programs or when working with third-party providers like online program managers who help deliver online programs. In some cases, institutions can offer the same degree and major both on-campus and online and the programs differ in curriculum, yet the outcomes are reported as though all students attended the same program. Even when the programs do not differ in curriculum, understanding how students fare with different modes of instruction would be helpful for students, institutions, policymakers, and more.

As the NPRM explains, this change is also important to better enable the Department to provide debt relief in terms of closed school discharges to students should their institution end one modality of learning, either in-person or online. This is especially important given the uncertain future of the online program manager, 2U, who recently filed for bankruptcy. Advocates have been raising continued warnings about 2U's specific shaky financial situation for over five years, as well as the general problems with private companies like 2U controlling many institutions' online programs.² 2U adamantly claimed there was nothing to be concerned about until just before it announced its bankruptcy, proving that private companies cannot be trusted to provide

¹ Data last updated on May 30, 2024; downloaded on August 6, 2024.

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https://d1y8sb8igg2f8e.cloudfront.net/documents/OPM_industry_impact_on_students_TCF_NA_CAP_to_ED.pdf;

<https://tcf.org/content/report/dear-colleges-take-control-online-courses/>;

<https://protectborrowers.org/ed-needs-to-begin-planning-now-for-the-possibility-of-a-large-opm-blowing-up/>

for-warning of their potential failure that would allow colleges, students and the Department to plan for a well managed transition.³ .

This concern is not just about online program managers or online education generally. For example, recently, Trinity International University announced that it was ending in-person enrollment⁴. Students who sign up for one modality might not want or be able to learn through the other modality. Creating a virtual location would help protect students who enrolled in a virtual modality and cannot easily switch if a school ceases offering online programs.

Student Distance Education Enrollment Reporting

We also support the proposed rule in § 668.41 to require institutions to report student enrollment in distance education or correspondence courses, using a procedure that would be determined by the Department. Like the proposal to create a virtual location, this change would provide important information to understand how students fare in various modalities. Insight into differences between in-person, fully-online, and hybrid instruction is good for students, institutions, and policymakers. This is a change that New America has supported for years, alongside the Postsecondary Data Collaborative.

Additionally, we want to take a moment to rebut some of the claims made by opponents of this proposal. We disagree with assertions made by the WICHE Cooperative for Educational Technologies (WCET) in opposition to this proposal. First, WCET said the proposal has morphed beyond the original proposal. This is incorrect. The Department has simply highlighted the various ways these data would be helpful to the Department, not listed additional reporting requirements. These are obvious benefits for students, taxpayers, policymakers, and even institutions that invest in the success of online learning.

Second, we disagree with WCET's claim that this would impose a significant burden and cost on institutions.⁵ As discussed during negotiated rulemaking, the Department was clear this rule would take time to implement at the Department given the capacity of the Office of Federal Student Aid (FSA). Institutional reporting can also be facilitated by a simple modification to existing National Student Loan Data System (NSLDS) reporting requirements. The Department can collect this information by adding a field that has three responses: fully in-person, fully online, or hybrid. Institutions already collect these data to provide aggregate information on student enrollment for these three categories that is reported to the Integrated Postsecondary Education Data System (IPEDS). All negotiators supported this proposal.

Lastly, we also disagree with the assertion made by WCET that this would violate the student unit record ban in the Higher Education Act. During negotiations, the Department made clear

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<https://www.newamerica.org/education-policy/edcentral/2us-bankruptcy-signals-urgent-need-for-federal-action/>

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<https://www.journal-topics.com/articles/trinity-international-university-goes-online-folds-athletic-programs/>

⁵ <https://wcet.wiche.edu/frontiers/2024/07/22/buckle-up-ed-is-off-to-the-races-with-its-nprm/>

that this data collection was only for title IV recipients, and as we explained above, it can be captured in the student-level reporting through NSLDS that already exists and that powers, among other things, the College Scorecard. This complaint is at best a surprising misunderstanding of current practice or, at worst, an intentional distraction from the actual arguments supporting the need for better data on distance education. WCET's complaints seem more like they are opposed to seeing the differences between students based on the mode of instruction. No one—let alone one of the supposed leading advocates for distance education—who cares about students should be opposed to having better information to understand how students fare and how institutions and policymakers can address potential equity gaps and improve student success. WCET's complaints are also disingenuous by stating that the Department's "proposal falls short of its own goals. If they want to make the comparisons between distance and on-campus students that they are touting, then they need information on ALL students." WCET should know that the Department cannot change a law as that is the responsibility of Congress. Either they want this data or they don't.

Clock Hour Programs

We support the Department's proposal in §§ 600.2 and 668.3 to prohibit clock hour programs delivered via distance education from being provided through asynchronous instruction for title IV, HEA purposes. Clock hour programs, by definition, are in fields where hands-on instruction is essential to becoming expert in what is being taught. Regular and substantive interaction with instructors must be the core of any clock-hour program. It is completely reasonable for asynchronous learning to supplement hands-on learning with an instructor, but it cannot substitute for those hours. Given these realities, we agree with the Department that asynchronous instruction in clock hour programs is more akin to homework than instruction. We also believe it is impossible for schools to adequately monitor that students are receiving regular and substantive interaction from their instructors in asynchronous instruction.

While we support this proposed rule, we urge the Department to go further and prohibit all clock hour programs from being provided through asynchronous instruction for title IV, HEA purposes. We are concerned that high-quality online education is especially difficult to provide for clock hour programs. This change is important because clock hour programs are different from credit hour programs in that clock hour programs are in the types of fields that require students to receive hands-on training--asynchronous instruction cannot provide that.

For example, an evaluation of job training programs funded by federal workforce dollars reported that the hands-on complement to the online components was often missing.⁶ One staff member explained this concern, stating, "You know, it's massage therapy. It's medical assistant. It's any of these trainings that Title I is funding. How do you teach somebody to be a beautician

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https://www.heldrich.rutgers.edu/sites/default/files/2022-06/Process_Evaluation_of_the_Integration_of_Title_I_and_Title_II.pdf

or to do nails or dog grooming [remotely]? How do you teach anybody to do a training if you can't have them doing something in person?"

A particularly egregious example of asynchronous learning without a much needed hands on component is the gunsmithing programs at Sonoran Desert Institute (SDI). SDI focuses on recruiting Veteran students, but as one former student has testified, "The instruction entirely consisted of YouTube videos that I could have watched for free on my own... and "The teachers seemed practically non-existent to me."⁷ Nothing in this provision will prohibit asynchronous learning as a supplement to synchronous learning in clock hour programs, but there is simply too much room for abuse to have those hours count towards the minimum hours of learning for a program.

New America previously conducted focus groups of adults with short-term credentials that also highlighted this issue.⁸ The former students explained how essential it was to receive hands-on training given the nature of their program, but online education made it difficult. One student explained how frustrating their experience was, saying "the majority [of students] said we were not getting what we want out of the class. We need hands-on experience."⁹

We understand the Department's intent with the revisions made to the definition of an academic year were focused on conforming to the proposal related clock hour programs, but we believe some edits to the proposed language would provide clarity. We suggest the Department clarify that the language in § 668.3(2)(ii) is focused on credit hour programs.

Return of Title IV Funds (§§ 668.21, 668.22)

We support all of the proposals related to the Return of Title IV funds (R2T4). We believe these changes are beneficial to institutions and the integrity of the title IV programs. While we support all proposals we wanted to highlight two of them and seek additional clarity on one. First, we support the proposal to amend § 668.21 to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note. This is an important change to help students who may have not been able to enroll for various reasons

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<https://vetsedsuccess.org/student-veteran-submission-matthew-c-testimony-to-the-department-of-education-march-2024/>

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<https://www.newamerica.org/education-policy/reports/five-things-policymakers-should-know-about-short-term-credentials/5-students-think-hands-on-training-is-useful-but-few-adults-with-short-term-certificates-receive-this-training/>

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<https://www.newamerica.org/education-policy/reports/five-things-policymakers-should-know-about-short-term-credentials/5-students-think-hands-on-training-is-useful-but-few-adults-with-short-term-certificates-receive-this-training/>

so that they can hopefully be able to complete their education at a later date. This change would also create parity between similar students who may have had to withdraw shortly after beginning attendance. We urge the Department to stick with this proposed rule.

We also support the proposal to amend § 668.22 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. We believe this change is important because it will better ensure the accuracy of the last date of attendance for distance education students. Because distance education students are not on campus they may have disengaged with their institution but not officially withdrawn. Furthermore, this data is easily available to institutions in their learning management systems (LMSs) and institutions should already be monitoring this to ensure that distance education students are receiving the regular and substantive interaction from their instructors, as required under existing regulations.

As the Department is considering finalizing this rule, we think it is important to highlight that every negotiator, except one, supported the proposal. And it was supported by the negotiator representing financial aid administrators, who represented the institutional staff who will play the largest role in implementing the new rule.¹⁰

Federal TRIO Programs (§§ 643.3, 644.3, 645.3)

We are happy to support the Department's proposal to expand access to Federal TRIO Programs for undocumented high school students wholeheartedly. The current regulations excluding non-citizens is arbitrary and counter to the goals of the Federal TRIO Programs. This is an important change that will help more students access postsecondary education.

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<https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/negotiated-rulemaking-program-integrity-and-institutional-quality-march-4-am.pdf>