

Distance Education and Accreditation

The Shifting Regulatory Landscape

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U.S. Department of Education

Regulatory Reform Agenda – 2021-2023

Affordability and Student Loan Committee – Significant Rule Changes

Closed School Discharge – [Final Rule](#) published – effective July 1, 2023

Borrower Defense to Repayment – [Final Rule](#) published – effective July 1, 2023*

Pre-dispute Arbitration – [Final Rule](#) published – effective July 1, 2023

U.S. Department of Education

Regulatory Reform Agenda – 2021-2023

Institutional and Programmatic Eligibility Committee – Significant Rule Changes

Ability to Benefit – [Final Rule](#) published – effective date: July 1, 2024

Administrative Capability – [Final Rule](#) published – effective date: July 1, 2024

Financial Value Transparency and Gainful Employment – [Final Rule](#) published – effective date: July 1, 2024

Financial Responsibility – [Final Rule](#) published – effective date: July 1, 2024

Changes in Ownership and Control – [Final Rule](#) published – effective July 1, 2023

Certification – [Final Rule](#) published – effective date: July 1, 2024

90/10 – [Final Rule](#) published – effective July 1, 2023

U.S. Department of Education

And 2024 ... (*negotiations occurred January-March 2024)

Accreditation* – Delayed

State Authorization* – Delayed

Return to Title IV* – Published NPRM; Awaiting Final Rule

Distance Education* – Published NPRM; Awaiting Final Rule

Cash Management* – Delayed

Third Party Servicer: Negotiated Rulemaking Process (TBD)

Incentive Compensation/Bundled Services: Revised Guidance by “End of 2024”

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

Common Regulatory Themes

- Affordability
- Access
- Accountability

Distance Education Proposals

- **Issue # 1 – Cash Management**
 - Eliminate the Inclusion of Books and Resources in Tuition and Fees
- **Issue # 2 – State Authorization**
 - Complaint Process for a State Authorization Reciprocity Agreement
 - Governance Structure for a State Authorization Reciprocity Agreement
 - Removal of State Exemptions from State Authorization Based Upon Accreditation or Being in Operation for at Least 20 Years
- **Issue # 3 – Distance Education [NPRM published; Awaiting Final Rule]**
 - Create a “Virtual Location” for Distance Education
 - Clock Hour (distance education asynchronous programs)

Distance Education Proposals

- **Issue # 4 – Return to Title IV Funds (R2T4) [NPRM published; awaiting Final Rule]**
 - Distance Education Withdrawals (taking attendance)
 - Modules (eliminate withdrawal exemption for programs offered in modules)
- **Issue # 5 – Accreditation**
 - Public representation on agency decision-making bodies
 - Substantive Changes and other reporting requirements
 - Recognition of State Agencies for the Approval of Nursing Programs
- **Issue # 6 – Federal TRIO Programs**

Proposed Rule – Distance Education

NPRM published on July 24, 2024.

Topics included Distance Education, R2T4, HEA Funds and Federal TRIO Programs.

DEAC published public comment on August 23, 2024 providing its positions on Proposed Rule.

Preamble Language:

“[H]elp the Department better measure and account for student outcomes, 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.”

Proposed Rule – Distance Education

New definition of additional location. The Department proposes to add a new definition of additional location that requires institutions to establish a virtual additional location if they offer 100 percent of a program online. This also includes programs that have mandatory on-campus or residential periods of 90 days or less.

Position: Opposed. Additional clarification regarding application of rule is needed.

New definition of clock hour. The Department removes the ability of clock hours offered through distance education to count towards a student's eligibility for student aid if those clock hours were completed through asynchronous learning.

Position: Opposed. Sufficient evidence supports effective student learning can be documented in asynchronous clock hour programs. Review proposal in additional Negotiated Rulemaking.

Definition of distance education course. A definition of distance education course is created, clarifying that a distance education course is a course offered exclusively through distance education despite in-person, non-instructional requirements that include orientation, testing, academic support services, or residency experiences.

Position: Opposed. Recommend that Department maintain current definition.

Proposed Rule – Distance Education

Academic year definition amended. The definition of academic year is amended to limit asynchronous coursework that can count towards an institution's definition of an academic year to coursework offered in credit-hour programs.

Position: Opposed.

Requirement to report enrollment in distance education programs. Regarding institutional reporting and disclosure requirements, the Department proposes requiring institutions to report enrollment in distance education or correspondence courses.

Position: Opposed. Request that Department provide additional information regarding the methodology and timing of the reports.

Proposed Rule – Return to Title IV

Exemptions from R2T4 Calculations: Exempts institutions from performing an R2T4 calculation in the event that (1) a student is treated as never having begun attendance; (2) the institution returns all title IV aid disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any current year balance owed by the student to the institution due to the institution's return of title IV funds to the Department.

Position: Support.

Documentation of Withdrawal Date: Codifies that an institution that is required to take attendance must, within 14 days of a student's last date of attendance, document the student's withdrawal date.

Position: Opposed. Disadvantages proposed changes present for distance education institutions and students are not justified by the alleged problem. Lacks expertise from distance education members.

Proposed Rule – Return to Title IV

Attendance Taking Requirement: Requires 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, for purposes of R2T4 calculation.

Position: Opposed. No justification for differential treatment of distance education students.

R2T4 Calculation: Include a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module.

Position: Support.

State Authorization: More Rule Changes?

- What is Motivating the Rule Change?
- ED is seeking enhanced consumer protection
 - **Re-center role of states** in triad as consumer protection.
 - **Allow states to enforce all their applicable laws and regulations on online colleges, regardless of whether the institution is part of a state authorization reciprocity agreement to provide distance education.**
- Critics of the proposal are concerned it will limit access to online classes for underserved students by creating more regulatory requirements and cost of compliance.

State Authorization: SARA Generally

- State Authorization Reciprocity Agreement (SARA) is a voluntary interstate compact for distance education that has since grown to include every state except California.
- Formed in 2013 after 2011 changes to the Title IV “state authorization” rule.
- Makes it easier for colleges to enroll out-of-state students, providing consistency in terms of the rules and regulations schools must follow in non-home states.
- State policies vary but under SARA, all participating institutions must follow the policies and procedures of the agreements including financial requirements.
- ED is concerned that under SARA, consumers have limited options in terms of what protections their state can provide if they are attending a distance education program offered by an out of state institution and that current reciprocity agreements “sideline states.”

State Authorization: SARA Generally

- Currently, under these agreements, states can enforce their laws related to misrepresentation and fraud, among others, but generally agree not to enforce other state laws including education-specific consumer protection laws. [Note: NC-SARA is currently reviewing policy changes to respond to this concern]
- ED concerned states are “deferring all, or nearly all, of their oversight responsibilities to other states and the governing bodies that oversee these agreements.”
- ED believes SARA’s policies do not “adequately guard against the unique risks” associated with distance education—an area they argue is more vulnerable to deceptive and unlawful practices.
- SARA critics believe SARA “incentivizes NC-SARA–participating schools to locate in states with weaker education-specific consumer protection laws, such as financial protections in the event of unanticipated closure, to avoid having to comply with more student protective laws.”

State Authorization: SARA Complaint Process

- The Department expressed concern that states are not informed of complaints subject to a reciprocity agreement from students located in their state about institutions located in another state.
- The Department indicates that without this information the state where a student is located cannot monitor if their students are protected by the reciprocity agreement.
- Additionally, they maintain that information must be reported publicly and at least annually about the number and type of complaints that occur from participating institutions in member states.
- This reporting is expressed by the Department as necessary for the state to receive information that could affect the state's decision about renewing its state's membership in the reciprocity agreement.

State Authorization: Proposals Under Consideration

Proposals under consideration:

- Sunset by 2030 “licensure by means of accreditation” and 20-year establishment as a means of state authorization for Title IV purposes.
- Require reciprocity agreements to collect and report, and require participating institutions to have a system to report, all student complaints to the State in which the student resides and allow for state investigation.
- Require that the governing board of any entity that oversees a State authorization reciprocity agreement consist solely of representatives from State regulatory and licensing bodies, enforcement agencies and State attorneys general.

State Authorization: Proposals Under Consideration

Proposals under consideration (continued):

- Allow states to enforce their own general purpose state laws and regulations, including regarding school closures, records, teach outs, tuition recovery funds and bonds.
- Permit all states to revoke reciprocity for violations of state law.
- Reciprocity agreements cannot apply to institutions with over 500 students in a state over the last two award years.

State Authorization: Questions

- What about a state's authority to voluntarily agree to reciprocity agreements and terms of same?
- Will the changes disincentivize institutions from joining SARA or other agreements?
- Do States have the capacity or interest in following through on their renewed oversight and authorization responsibilities if the department's plan were to take effect? (21 states have no policies regulating out-of-state distance education)
- Critics of the proposal believe it weakens consumer protection by removing uniform protections for students if states and institutions leave SARA.

Accreditation – 34 C.F.R. Part 602, 604

The Department has considered in negotiated rulemaking proposals address the federal regulations that the Department uses to recognize (and continue to recognize) accrediting agencies for Title IV gatekeeping purposes.

The Department seeks to:

- implement a system of risk-based review of accrediting agencies,
- increase the rigor of accreditation, and
- support accreditation as a critical pillar of the program integrity triad.

Accreditation

Department negotiating proposals included, among others –

- Requiring that public members serving on agency decision-making bodies are independent of the accreditor (including through consulting or contract relationships), affiliated associations, accredited institutions or programs, USDE, state agencies and other recognized accrediting agencies.
 - 5-year ban for such covered persons.
 - Extends broadly to family members – (i) parent, stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or stepgrandchild; (ii) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild; (iii) Child's spouse; or (iv) Sibling's spouse.

Accreditation

Department negotiating proposals included, among others –

- Majority of agency's decision-making body may not be executive officers or board members of the agency's accredited institutions or programs.
- Requiring accreditors to take action more quickly when they identify areas of non-compliance.
- Revising substantive change requirements to focus on changes of greatest risk.
- More closely aligning the accreditation regulations with Title IV eligibility regulations.
- ED denial of change of accreditor if the institution “Has been directed to select a particular accrediting agency by a party other than the institution.”

Accreditation

Department negotiating proposals included, among others –

- Requiring agency standards for success with respect to student achievement that must identify minimum expectations of performance which may include, but are not limited to, consideration of State licensing examinations, course completion, and job placement rates.
- Critics of the proposal state that requiring all recognized accreditors to set student achievement standards would undercut the “expertise and purpose of the holistic review by the accreditors.”

Accreditation

Department negotiating proposals included, among others –

- Requirement to treat as a substantive change when an institution that the agency has approved to offer distance education meets or exceeds a 50 percent threshold for distance education offerings.
 - Meeting or exceeding a 50 percent threshold for distance education means that the institution, during an award year and for the first time:
 - offers at least 50 percent of a program through distance education;
 - enrolls at least 50 percent of its students through distance education, which, for the purposes of these calculations, means that at least 50 percent of the institution's students are enrolled in at least one course offered through distance education; or
 - offers at least 50 percent of its courses through distance education.

Accreditation – 34 C.F.R. Part 602, 604

Department negotiating proposals included, among others –

Substantive Change: Written arrangements: Agency requirements must include at a minimum—

- (1) Confirmation that the arrangement complies with limitations on the amount of the program that the ineligible institution or organization provides as described in 34 CFR 668.5(c)(3).
- (2) A demonstration by the accredited institution that the ineligible institution or organization has sufficient administrative and financial capacity and expertise to deliver the portion of the program provided under the arrangement.
- (3) A requirement that the accredited institution retains the responsibility for the educational outcomes, recruiting and marketing practices, and compliance with the accrediting agency's standards.

Agency Recognition Petitions

Department negotiating proposals included, among other considerations –

- Number of institutions closed without an approved teach-out agreement in place
- Significant number of Title IV compliance issues among the institutions
- ED has received serious or a high volume of complaints about the institutions
- Agency has significantly increased the number of institutions it accredits;
- Institutions it accredits are subject to any investigation, legal action, or administrative proceeding by, or have recently entered into a settlement with, a State or Federal agency, including the Department; and
- The number of noncompliant findings identified in the senior Department official's decision letter for the agency's application for renewal of recognition.

Proposed Rule – Cash Management

- Current regulations allow institutions to include (under certain conditions) the cost of books and/or supplies in tuition and fees.
- The Department allows for such contracts if the student is given a way to opt-out. Student, consumer, and other groups have objected to the difficulty for students to remove themselves from these programs.
- The Department is concerned that institutions have not been transparent about how a student can opt out so that they can assess if less expensive options are available elsewhere.

Proposal –

- The Department proposes to eliminate the provision allowing institutions to include the cost of books and supplies as part of tuition and fees in most cases. The practice would still be allowed if an institution could demonstrate a *“compelling health or safety reason, or if the institution is the only option for students to access the books or supplies.”*

Proposed Rule – Cash Management

Concerns

- Inclusive access has grown as the publishers have found it to be an attractive solution that lowers textbook costs and increases their revenues.
- Some institutions charge a student fee (a fraction of the price of one textbook) to cover the cost of creating, supporting, and maintaining low-cost textbooks. The proposed language could unintentionally harm these beneficial programs. Institutions will need time to implement this proposal to consider new textbook alternatives in every course, adjust business processes, and address contractual obligations.

Thank You

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