

Archived Information

**STUDENT FINANCIAL ASSISTANCE
AND NONTRADITIONAL
EDUCATIONAL PROGRAMS
(INCLUDING THE “12-HOUR RULE”)**

A REPORT TO CONGRESS

**U.S. Department of Education
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CONGRESSIONALLY REQUESTED REPORT ON THE “12-HOUR RULE”

Executive Summary

The conference report on the Department of Education Appropriations Act, 2001, P.L. 106-554 requested that the Department report to Congress on the results of its discussions with the higher education community and on what action, if any, the Department anticipates taking on the 12-hour rule. The conference report also requested that the Department make recommendations to Congress by October 1, 2001, regarding the most appropriate means to maintain the integrity of the Federal student financial assistance programs without creating unnecessary paperwork for institutions of higher education.

In accordance with this Congressional request, this report contains details on the background and history of the 12-hour rule, information from two meetings with the higher education community that were held in October 2000 and January 2001, and information from three focus groups that were held in November and December 2000. This report also summarizes the many interesting ideas that were generated by the meetings and focus groups but contains no recommendations for next steps. It is the Department’s intention to continue working with the higher education community on issues surrounding nontraditional education and, in particular, providing Federal student financial assistance to students enrolled in those programs.

In 1992, the Congress amended the Higher Education Act of 1965 (HEA), to define an academic year as a minimum of 30 weeks of instructional time. By defining the term academic year, the Congress hoped to address fraud and other abuses related to the length of higher educational programs, in particular the practice by certain institutions of stretching the length of their educational programs without providing additional instruction in order to maximize the amount of Federal student financial aid received by their students.

Because the statute did not define what constitutes a week of instructional time, the Department of Education (the Department) regulated the following definitions:

- For educational programs using standard terms (semesters, trimesters, or quarters) or clock hours, the Department defined a week of instructional time as any week in which one day of regularly scheduled instruction, examination, or preparation for examination is offered.
- For educational programs using nonstandard terms or nonterms, the Department defined a week of instructional time as any week in which at least 12 hours of

instruction, examination, or preparation for examination is offered. This requirement became known as the “12-hour rule.”

In 1992, most programs were offered in the traditional semester or quarter format. Over the past ten years, however, as a result of technological advances and adult student demand, nonstandard term or nonterm programs have proliferated. Institutions began offering programs in shorter time periods, in overlapping terms with multiple start dates, and other nontraditional formats. Distance learning revolutionized the delivery of higher education programs but also created new challenges related to program length. For these nonstandard or nonterm educational programs, compliance with the 12-hour rule became increasingly difficult. However, nonstandard and nonterm educational programs are not excused from compliance with the 12-hour rule. Although there have been many developments in the mode of delivery for education, the predominant mode remains the traditional semester or quarter format.

By 2000, many groups, including ones in the higher education community, Congress and the Department, had grown concerned that a number of statutory and regulatory provisions, including the 12-hour rule, might be stifling innovation and keeping Federal student financial assistance from the growing number of students enrolled in nontraditional programs. *The key issue is how to make changes that allow the continued development of innovative educational programs while ensuring that the amount of educational instruction is adequate and comparable to that offered in traditional term-based programs.*

Two proposed items related to nontraditional educational programs were added to the Department’s 2000 negotiated rulemaking agenda for discussion. However, the Department decided not to develop new rules during negotiated rulemaking because of the complexity of the issues involved and the limited time that could be devoted to their consideration. The Department committed to further meetings with the higher education community in order to more fully explore the issues.

Congress acknowledged the community’s concerns in its conference report on the Department of Education Appropriations Act, 2001, P. L. 106-554, and noted that the Department of Education had agreed to meet with the community about this issue.

Background and History

Over the years, concerns were expressed about fraud and abuse in the Federal student financial assistance programs, especially the Federal Family Education Loan Program and the Federal Pell Grant Program. In response to these concerns, in 1990, the Senate's Permanent Subcommittee on Investigations (PSI) held hearings and, in 1991, issued a report that included 29 recommendations to the Department. A number of the recommendations made by PSI were adopted during the reauthorization of the HEA in 1992. In 1993 and 1995, PSI held related hearings concerning proprietary schools' fraud and abuse under the Federal Pell Grant Program.

Growth of Nontraditional Educational Program Formats

The postsecondary education landscape has changed since the HEA was reauthorized in 1992. Default rates have decreased significantly as have the number of postsecondary institutions that participate in the Federal student financial aid programs. Congress included a number of provisions in the 1992 HEA reauthorization that were designed to guard against fraud and abuse. One such provision was the minimum 30-week academic year requirement that addressed issues of program length, such as artificially extending the length of a program without increasing the amount of instruction in order to qualify for additional Title IV funds.

Since then, as a result of growing demand from adult students and changes in technology, there has been significant growth in the number and type of programs that institutions are offering in a nontraditional educational format. Institutions that historically offered programs only in a traditional format have begun to offer their programs in different formats. For example, some institutions are offering courses in shorter time periods of six or eight weeks, as compared to the traditional 15-week course lengths. Other institutions are offering instruction in overlapping terms and with multiple start dates. The growth of distance education also presents new and different challenges for institutions.

The structure of the Federal student financial assistance programs reflects a time when most institutions offered instruction in classrooms on a semester or quarter calendar, which is still the predominant method of delivery. The statutory and regulatory requirements governing the Federal student financial assistance programs may no longer fit these new nontraditional educational program formats.

Legislative and Regulatory Background

Prior to the Higher Education Amendments of 1992, the HEA contained a definition of academic year in section 481(d). That provision stated that the Secretary shall define the term academic year in regulations. The Higher Education Amendments of 1992 amended the definition of an academic year in section 481(d) of the HEA to include both a minimum number of credit hours for undergraduate students and a minimum length of

instructional time for all students. The Higher Education Amendments of 1998 moved that definition to section 481(a)(2).

Section 481(a)(2) of the HEA provides that an academic year for Title IV, HEA student financial assistance purposes must contain at least 30 weeks of instructional time. For undergraduate programs, the law requires that over the 30 weeks of instructional time a full-time undergraduate student must be expected to complete at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours. This definition of an academic year was published in the Student Assistance General Provisions regulations (34 CFR Part 668) on April 29, 1994 and subsequently modified on November 29, 1994 in response to public comment.

In the preamble to the February 28, 1994 Notice of Proposed Rulemaking for implementation of the new law, the Department suggested establishing a minimum full-time workload for students enrolled in programs that are measured in credit hours without standard terms. In the April 29, 1994 interim final regulations, the Department decided to instead add a provision to the academic year and eligible program definitions that defined a “week of instructional time” for these programs as any week in which at least 5 days of regularly scheduled instruction, examination, or preparation for examination occurs. For all other programs, a week of instructional time was defined as any week in which at least one day of regularly scheduled instruction, examination, or preparation for examination occurs.

In an effort to provide greater flexibility to institutions that serve nontraditional students, the November 29, 1994 final regulations changed this provision to require that 12 hours, rather than 5 days, of regularly scheduled instruction, examination, or preparation for examination occur in a week to be counted as a week of instructional time. Instructional time includes internships, cooperative education programs, independent study and other forms of regularly scheduled instruction. Instructional time does not include periods of orientation, counseling, or vacation. Final regulations published November 1, 2000 clarified that homework does not count as instructional time and that, in terms of “preparation for examinations,” only study for final examinations that occurs after the last scheduled day of classes for a payment period would count as instructional time.

Standard Term-based Programs

In accordance with the Student Assistance General Provisions regulations, an institution that offers a program in standard terms (semesters, trimesters, or quarters) is considered to have provided a week of instruction for that program if it offers at least one day of instruction, examinations, or preparation for examinations in a week. The Department did not establish a minimum number of instructional hours that must occur during that one day because, as stated in the preamble to the November 29, 1994 regulations, full-time students attending standard term programs were generally presumed to be in class attendance for at least 12 hours each week. This measure was derived from standards used in traditional education, where a certain amount of outside preparation was estimated to take place for every hour of classroom instruction.

Nonterm and Nonstandard Term-based Programs

Different rules for nonterm and nonstandard term-based programs were adopted when the Student Assistance General Provisions regulations were promulgated in 1994. The Department believed that nonterm and nonstandard term programs might be set up with elongated instructional schedules that did not provide the appropriate amount of instruction for a full-time student. As a result, a student could receive more Title IV funds than was appropriate for the amount of instruction received. In addition, the Department was concerned that the workload offered in these programs was not properly distributed throughout the period. Therefore, the regulations defined a week of instruction as occurring when these programs offered at least 12 hours of instruction, examination, or preparation for examination during a period of at least a week.

The regulations specified that instructional time does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations. In the preamble to the final regulations, the Department stated that instructional time does include internships, cooperative education programs, independent study and other forms of regularly scheduled instruction.

The regulations do not require an institution to offer 12 hours of instruction, examination, or preparation for examination each week. However, a school that sets its academic year at the statutory minimum of 30 calendar weeks would have to meet an average of 12 hours per week for the 30 calendar-week period. A school with a program that meets less frequently than 12 hours a week would have to meet enough calendar weeks to provide 360 hours (30 calendar weeks x 12 hours per week) of instruction, examinations, or preparation for examinations in order to have a program offered over a full academic year (equivalent to 30 weeks of instructional time). For example, if a school wants to establish an academic year of 30 weeks for a credit-hour, nonterm program that meets 10 hours a week, the school would need to have approximately 36 calendar weeks (36 calendar weeks x 10 hours per week = 360 hours of instruction, examination, or preparation for examination) in order to have the equivalent of 30 weeks of instructional time for a full academic year.

Although the “clock hour/credit hour conversion” regulations¹ prevent some of the potential for fraud and abuse, they do not prevent all of it. They do not apply to all of the programs that the Department has concerns about, and they do not prevent an institution from stretching the length of an educational program to conform to the minimum number

¹ The clock hour/credit hour conversion regulations were published in the Federal Register on July 23, 1993 (58 FR 39618-39623). These regulations established a regulatory formula to determine whether certain educational programs qualify in credit hours as eligible programs and the amount of Title IV student financial assistance that students enrolled in those programs may receive. For these purposes, the formula requires that a semester, trimester or quarter hour contain a specific minimum number of clock hours of instruction. The programs that are subject to this formula are basically certificate programs of one-year or less.

of weeks of instructional time required for an academic year without offering an appropriate quantity of instruction during each of those weeks.

2000 Negotiated Rulemaking

Two items related to nontraditional programs were included in the Department of Education's proposed agenda for negotiated rulemaking in the spring of 2000: (1) the definitions of standard term, nonstandard term, and nonterm and (2) the application of the 12-hour rule as found in the academic year and eligible program definitions. In placing these two items on the agenda, the Department intended to begin the process of discussing the numerous issues involved in providing student financial assistance to students enrolled in nontraditional educational programs. As the negotiations progressed and the Department held internal discussions, it became obvious that taking a piecemeal approach to these issues was not appropriate given the timeframe allotted for the negotiations and the other topics that needed to be discussed. Changes to the 12-hour rule have such broad implications and are so intertwined with other areas of Federal student financial assistance administration that the Department believed that it was necessary to have a more comprehensive examination and discussion of these issues before proposing any changes. Therefore, the Department committed to a process outside of negotiated rulemaking in which interested parties would meet and discuss these issues.

Meetings with Members of the Higher Education Community

In September 2000, the Department invited all interested parties to attend a meeting on October 12, 2000 to discuss issues surrounding nontraditional education and providing Federal student financial assistance to students enrolled in those programs. The Department decided to expand the discussion for a more comprehensive examination of the various issues surrounding nontraditional education rather than focusing solely on the 12-hour rule. At the end of that meeting, the Department indicated it would convene several focus groups to explore some of the issues raised at the meeting in greater detail and to include financial aid administrators in those discussions. The goal was to fully identify the barriers that may exist in providing Federal student financial assistance to students enrolled in nontraditional educational programs.

The Department convened three focus groups:

- The first focus group met on November 28, 2000, and looked at issues relating to the “quality” of education in nontraditional programs, including the 12-hour rule as a measure of the amount of instruction being provided, what information institutional accreditation provides as a measure of quality, inputs, outcomes, and other possible measures of quality.
- The second focus group met on December 1, 2000, and discussed time and the use of time in the calculation and disbursement of Federal student financial assistance and alternatives to time as a program measure (including the 12-hour rule).
- The third focus group met on December 8, 2000, and examined the organizational principles used in the student financial assistance programs (standard terms, nonstandard terms, nonterms) to examine whether they work for nontraditional educational programs or whether new approaches are necessary or desirable, as well as the capacity of institutional and Departmental systems to handle nontraditional term structures.

On January 8, 2001, the Department again invited all interested parties to a meeting to review and discuss the results of the focus groups and to identify and explore possible next steps.

Meeting of Interested Parties--October 12, 2000

On October 12, 2000, the Department held its first meeting with interested parties to discuss issues related to providing student financial assistance to students enrolled in programs offered in nontraditional educational formats. Over sixty people representing higher education associations, institutions, accrediting agencies, students, law firms, and other interests attended this meeting.

Former Assistant Secretary for Postsecondary Education A. Lee Fritschler opened the meeting noting that some of the barriers that may exist in providing student financial assistance to students enrolled in programs offered in nontraditional educational formats were put in place to prevent abuse. He challenged the participants to find alternative approaches to replace any barriers yet preserve the integrity of the student financial assistance programs.

Office of Postsecondary Education (OPE) staff then gave a presentation providing some general information on the current requirements for providing student financial assistance to students enrolled in nontraditional educational programs. The presentation was a repeat of a session they had provided at the National Association of Student Financial Aid Administrators Annual Conference during the summer of 2000, which several representatives of the higher education community had indicated assisted them in better understanding the variety of issues surrounding student financial assistance and nontraditional educational program formats.

The presentation used several examples of nontraditional program formats—one that consisted of miniterms that were combined into standard semesters and that were offered concurrently with standard semester courses with cross-registration; another example portrayed terms of unequal length (nonstandard terms) with experiential coursework alternating with traditional on-campus coursework; and the final example was a self-paced program. For purposes of the discussion, all of the programs were either not subject to the 12-hour rule or met the 12-hour rule requirement. However, the presentation illustrated the complexities that currently exist in providing student financial assistance to students enrolled in programs offered in nontraditional educational formats.

After the presentation, there was a discussion of the various issues related to providing student financial assistance to students enrolled in programs offered in nontraditional educational formats. Several themes emerged from the discussion.

One theme was that nontraditional education is going on in traditional settings and there is a need for schools to understand what they can and cannot do under the current statute and regulations if they wish to provide Title IV aid to their students. Others felt that whatever changes are made need to be understandable to a knowledgeable amateur, to work for all of the various ways that higher education is currently provided, and to be flexible enough to fit circumstances that have not currently been envisioned. There were comments that the 12-hour rule inhibits academic flexibility and is almost impossible to measure in a distance learning environment.

Another theme that emerged was the role of accrediting agencies and how much confidence can be placed in accrediting agencies in determining the quality of education.

The final theme that emerged revolved around the next steps that the Department planned to take. In particular, participants wanted to know if there would be additional guidance or safe harbors provided concerning the current statutory and regulatory requirements and whether this issue would be addressed during the next round of negotiated rulemaking or

wait for reauthorization. Several participants encouraged the Department to look for both short-term and long-term solutions to these issues.

At the conclusion of the meeting, the Departmental representatives stated that the Department planned to hold several focus groups over the next several months to discuss in detail the various issues raised during the meeting and would follow those focus groups with another meeting with the broader community to share what was learned and to discuss possible next steps.

Focus Groups—November 28, 2000, December 1, 2000 and December 8, 2000

Three focus groups were held to explore some of the issues in greater detail with financial aid professionals. Staff from OPE led the focus groups, and there were approximately 30 participants representing institutions, accrediting agencies, higher education organizations, and law firms attending each of the three focus groups.

The first focus group (November 28, 2000) looked at issues relating to the “quality” of education in nontraditional programs, including the 12-hour rule as a measure of the amount of instruction being provided; what information institutional accreditation provides as a measure of quality; inputs; outcomes; and other possible measures of quality. In framing the issues for discussion, the Department provided an overview of the history of the role of accrediting agencies and the history of the 30-week academic year requirement, of which the 12-hour rule is an outgrowth. The Department asked the participants to consider whether accreditation alone is sufficient for assuring all aspects of the quality of education provided by eligible institutions.

The second focus group (December 1, 2000) discussed “time” and the use of time in the calculation and disbursement of student financial assistance and alternatives to time as a program measurement (including the 12-hour rule). The Department began the meeting by reviewing the various uses of “time” in the student financial assistance programs. The 30-week academic year and the 12-hour rule, derived from it, serve as proxies for guaranteeing that postsecondary institutions are providing an adequate amount of instruction to warrant the taxpayers’ investment. The 30-week academic year requirement also serves as the baseline for calculating the amount of aid a student in less than a 30-week program is eligible to receive. Time is also used to establish a framework for the disbursement of aid.

The third focus group (December 8, 2000) examined the organizational principles used in the student financial assistance programs (standard terms, nonstandard terms, nonterms) to examine whether they work for nontraditional educational programs or whether new approaches are necessary or desirable, as well as the capacity of institutional and Departmental systems to handle nontraditional term structures. The Department began the discussion by noting that the awarding and disbursing of Federal student financial assistance is organized around three program formats: programs offered in standard terms, nonstandard terms, and nonterms. The Department further explained each format in some detail and how and why requirements for nonstandard term and nonterm programs were developed. Then, the Department discussed how the format of the

educational program impacts the awarding and disbursing of Title IV student financial assistance. The Department also noted that some institutional systems that support administration of Federal student financial assistance organize processes around standard terms and may not be flexible enough to accommodate other configurations. The Department presented issues related to a possible new model based upon a student-based approach² rather than an institutional or program-based approach to providing student financial assistance.

Focus Group Discussion

The participants approached the focus groups as problem-solving sessions to fully identify and discuss the issues surrounding providing student financial assistance to students enrolled in programs offered in nontraditional educational formats. The discussions were constructive and collaborative; however, the questions and issues are difficult ones and there was no real consensus reached in any of the focus groups, except that change of some kind is needed. In addition, because the issues are so intertwined, there was considerable overlap in the discussions in the focus groups.

General

Thirty-week academic years consisting of two semesters or three quarters continue to be the predominant pattern for organizing instruction. However, many institutions would provide, and some are beginning to provide, alternative models for at least some of their programs or coursework, if it were feasible to offer Federal student financial assistance in constructs of time other than the standard semester or quarters. It was clear that the current statutory and regulatory requirements tend to limit the options institutions have to configure academic programs if they wish to make Federal student financial assistance available to their students. It was also clear that, while neither the statute nor the regulations preclude providing aid to students in many of these “nontraditional” models, institutions are not sure how to apply the requirements to many of these program formats and need additional guidance. Anecdotal information suggests that, as a result, where institutions offer programs in other configurations, they often do not provide Federal student financial assistance to the students enrolled in those programs. This practice limits access to those who can afford to pay or who receive support from other sources, such as employers.

Accrediting Agencies

Many participants felt that the Department should accept that accrediting agencies do provide sufficient assurance of the quality of education since the Department cannot take on the task because it has neither the authority nor the capability.

However, some participants were willing to concede that if the Department did have questions, particularly relating to the 12-hour rule as a proxy for quality, the requirements governing accrediting agencies could be expanded to require more oversight of programs,

² The student-based delivery model is discussed in more detail later in this report.

particularly program length. In fact, a few participants felt that the Department should be the entity that identifies what accrediting agencies need to address in this area. Other participants took exception to this position on the basis that the statute already requires accrediting agencies to look at program length and that there really is no evidence that removing the 12-hour rule would result in an increase in fraud and abuse. One participant noted that most accrediting agencies are not monitoring at the individual course level and it is not realistic to expect them to be “hall monitors.”

One participant made the suggestion that accrediting agencies should take on more responsibility for the quality of on-line courses that are not based on courses already being offered in the traditional classroom format. Other participants pointed out that all accrediting agencies have developed either standards or guidelines governing distance education, and thus are already addressing the quality of distance education specifically. It was noted that accrediting agencies are developing best practices for distance education and that the regional accrediting agencies have draft guidelines for distance education.³

Several participants suggested that student outcomes should be more important in evaluating the quality of education than time spent on task. However, no one presented any suggestions as to how the Department might actually accomplish this.

Comparability of Coursework

Examining comparability of instruction between on-site and distance courses was also mentioned. Some participants pointed out that how the coursework is presented and how the student interacts with the material is so different that comparisons are very difficult except perhaps on the basis of learning outcomes or the competencies that students acquire. A number of participants stated the opinion that coursework should be treated the same regardless of the format in which it is offered; that is, a three-credit course should be treated the same regardless of the mode of instruction and the method of delivery should not impact how the coursework is treated for student financial assistance purposes.

Term Structure

Since 30-week academic years consisting of two semesters or three quarters continue to be the predominant pattern for organizing instruction at institutions, there seemed to be agreement that the requirements for standard terms are sufficient and work for institutions. However, since there are no clear definitions as to what constitutes a nonstandard term or nonterm program in either the statute or the regulations, participants indicated that confusion exists as to what requirements apply. Some participants believed that there is a “comfort level” within the community, the Department, and Congress with

³ Representatives of the six regional accrediting bodies have finalized a set of recommendations for building and evaluating online-education programs, but the recommendations will not become accreditation standards. (Chronicle of Higher Education, April 6, 2001)

standard term programs that does not extend to nonstandard term or nonterm programs. Some participants believed that the Federal government views nontraditional programs with a perception of fraud and abuse and questioned the validity of this perception. Participants pointed out that if we continue to use terms to maintain a structure for disbursing student financial assistance, where there is a period with a beginning and an end and awards can be prorated, then nonstandard terms could be derived from and compared to standard terms.

12-Hour Rule

Several participants expressed the opinion that there are some inherent differences between nonterm and standard term programs but suggested that there are more commonalities between nonstandard term and standard term programs and that those types of programs should be treated the same. Some participants suggested that the 12-hour rule should not be applied to nonstandard term programs and that the “one day a week of instructional activity” should be applied to nonstandard term programs instead. Other participants suggested that all programs (standard term, nonstandard term and nonterm) should be treated the same and that the one-day-per-week rule should apply to all programs. Those participants indicated that if the one-day-per-week rule is sufficient for standard term programs, it is equally sufficient for nonstandard term and nonterm programs.

Another idea that was presented was to expand what is considered instructional time to include other activities that the learner engages in that could be monitored and tracked. One participant felt that there is a movement away from measuring instruction and that the measurement of interaction may be more appropriate.

Disbursement

The question of disbursement of student financial assistance was another issue discussed in the focus groups. Participants suggested that the issue the Department is trying to address with the 12-hour rule is really to assure that there is a sufficient quantity of instruction offered rather than the quality of the instruction, per se. The higher education community has tended to use traditional standards to measure quantity, such as the Carnegie unit (which in a traditional setting, assumes 12 hours of seat time per week for full-time enrollment) that do not translate to nontraditional programs. Some participants felt the issue of quantity of education could be addressed by revising the requirements for disbursing student financial assistance funds. One participant suggested that funds be disbursed after the student has completed the work, but most participants agreed this would be a significant barrier to access. No other concrete suggestions were made as to how a new disbursement system might be structured to address concerns about the quality or quantity of education, although many participants seemed to agree that this might be a fruitful avenue of exploration.

Participants discussed the view that, historically, seat time has ruled delivery of student financial assistance and has been equated with the quantity of education being provided.

One participant suggested that we should consider a payment concept that delivers financial aid when a student achieves credits and that we should not be concerned with time. The participant further questioned whether we should replace time with credit hours. In a traditional setting, the Carnegie unit assumes 12 hours of seat time per week for full-time enrollment.

One participant suggested that the Department look at the academic effort and the learning opportunity over time in developing a model that accounts for the smallest unit rather than for the program and incorporates a structure that would roll those individual smaller units into a whole. Another participant asked if there is a way to define what quantity of education needs to occur in an academic year and then let schools decide how to measure the amount of education.

Acceleration

Accommodating acceleration (moving through an academic program more quickly) was a topic of discussion. One participant suggested that the Department should be looking at credit hours achieved regardless of how quickly or slowly the credits are achieved. The group discussed that it would be necessary to determine how quickly credits could be earned and still represent an adequate amount of instruction that taxpayers would be willing to fund. A participant pointed out that keeping in mind that nontraditional programs tend to be for nontraditional learners, moving to awarding student financial assistance on credit hours achieved may penalize students who need more time to achieve credit hours.

Department staff and others were concerned that there needs to be some equity in the amount of student financial assistance awarded for the time expended and for the credits attempted or earned. A student who is accelerating his or her program of study might receive more student financial assistance than a student who is not accelerating. It was suggested that one way to assure equity and provide for acceleration might be to decouple direct or academic expenses from indirect or living expenses. Another issue discussed was how to determine the amount of aid for living expenses for students who accelerate their program of study and for those who take longer than anticipated in their program of study.

Direct vs. Indirect Costs

Issues surrounding how to pay for direct costs (tuition, fees, room and board, if on-campus, and required books and supplies) and indirect costs (room, board, transportation, dependent care, personal expenses) were discussed throughout the focus groups. Looking solely at credits achieved raises issues about how to pay for living expenses and other indirect costs such as transportation. Students may be taking fewer credits, but they still have the same living expenses as students who are taking a full-time course load. Awarding for direct and indirect costs shows the differences between the Pell Grant and loan programs. The group spent some time discussing how indirect costs are addressed in cost of attendance and need analysis, how real expenses can be much higher than loan limits and the amount of student financial assistance available, and how

these factors might affect a self-paced student. There was also some discussion about whether student financial assistance should cover indirect costs. Some participants felt that covering only direct costs for certain programs is sufficient while other participants believe that covering indirect costs for students is critical to access for certain populations of students.

Complexities in the Various Financial Aid Programs

Another theme that emerged from the discussions was the complexities caused by differing requirements of the various student financial aid programs. There was some agreement among the participants that a great deal of progress would be made if many of the provisions in the various student financial aid programs were made consistent. However, there was not agreement about what those provisions would contain.

Models

The group discussed a couple of models that participants in the Distance Education Demonstration Program have developed. Western Governor's University (WGU) has developed a system that entails WGU drawing down and disbursing aid only as charges are incurred, which in their case may be at varying times throughout a payment period. The Colorado Community Colleges have developed a model that decouples disbursement of aid for direct expenses from disbursement of aid for indirect expenses to allow for acceleration. Developing institutional systems that can handle flexibility would be required to manage new student financial assistance delivery models. The Colorado Community Colleges are in the process of actually changing their systems to accommodate their plan.

Department staff suggested that a student-based delivery model which provides for smaller disbursements as charges are incurred and which includes examination of student progress as the student moves from one learning segment to another might work well for nonstandard and nonterm programs. Several participants felt that the idea deserves further study.

Department staff presented some issues related to the development of a new model based upon a student-based approach rather than an institutional or program-based approach to providing student financial assistance. Under this new model, instead of basing award calculations on an institutional calendar, the calculations would be based on an individual student's academic plan. This approach would allow a student more flexibility in determining his or her schedule. The Department suggested that smaller amounts of aid might be disbursed as needed and as the academic work is completed.

Participants raised a number of issues that need to be considered in developing a student-based delivery model, including financial aid for students who are taking coursework at more than one school; systems implications; treatment of financial aid when a student "skips" a segment of his educational program; compliance; administrative burden; and the frequency, amounts and timing of financial aid disbursements.

The issue of how to handle direct and indirect costs under this model received a lot of discussion. One option would be to disburse aid for direct costs as they are incurred and to disburse aid for indirect costs as the student goes through the program, based on a front-end calculation. One participant suggested that this model might require tracking direct and indirect costs separately and questioned how to handle self-paced programs. Schools might find it difficult to handle direct and indirect costs on a per student basis, but perhaps software could be developed that would assist schools.

Another participant suggested an alternative approach that would result in the disbursement of the aid for direct and indirect costs at the same time but the disbursement would be made per module. The Department pointed out that this suggestion is similar to the model that WGU used in which students develop an academic plan, enroll in courses, and incur expenses and the disbursements of aid occur over time and are not made until needed.

Participants asked if using such a model would be an option for institutions or would be required. Another participant suggested that the new model be explored for the loan programs first because many nontraditional programs are graduate programs.

Participants suggested that more frequent disbursements of financial aid may be desirable for cash management but there are administrative difficulties with that approach. Systems currently in place may not be able to accommodate such a model; however, participants noted that systems should not drive policy decisions.

Another issue that was discussed is whether subsequent disbursements would be made based on attempted credits or credits earned. This issue historically has been treated differently for nonterm programs than for standard term or nonstandard term programs. For nonterm programs, a student must successfully complete the credit hours or clock hours for which he or she has been paid before receiving a subsequent disbursement. For standard term and nonstandard term programs, disbursements are made at least once for each term regardless of whether the student successfully completed all of the coursework he or she began in the previous term.

One participant felt that there are a lot of issues and problems to resolve in developing student-based delivery system and wondered if the need for a dramatic solution is that great. The participant suggested that perhaps we can only go so far. In this participant's view, a student-based system seems open for abuse.

Meeting of Interested Parties—January 8, 2001

On January 8, 2001, the Department held another meeting with interested parties to review and discuss the results of the focus groups and to identify and explore possible next steps. Approximately 50 people representing higher education associations, institutions, accrediting agencies, students, law firms, and other interests attended this meeting.

Following Department staff summaries of the three focus groups, the participants were asked to consider three recurring issues that had emerged from focus group discussions:

- Consistency between Title IV programs
- Modification or elimination of the 12-hour rule
- Exploration of a student-based delivery model for nonstandard term and nonterm programs

Consistency Between Title IV Programs

The focus groups discussions often centered on lack of program consistency in the following areas: student eligibility requirements for the Pell Grant, campus-based, and loan programs; the requirement that a student be enrolled at least half time to receive an FFEL or Direct Loan, while no such requirement exists for the other Title IV programs; different disbursement requirements for the Pell Grant Program than for the FFEL and Direct Loan programs; the 30-day delayed disbursement requirement for first-time FFEL and Direct Loan borrowers; the requirement for equal payment in the FFEL and Direct Loan programs while Pell Grant payments are prorated; differences in the amount of aid a student receives depending on enrollment status and the type of aid; and the adjustment of aid depending on a student's level of attendance.

The participants discussed which of the program inconsistencies are based in statute and which are regulatory.

One participant suggested that rather than looking at the problem only from the program consistency standpoint, the Department may need to consider solutions such as short-term loans that employers can reimburse since nontraditional programs serve adult students with different needs than traditional college-aged students. The participant pointed out that lenders frequently do not want to make small loans, which is a practice that disadvantages adult nontraditional students. The Department suggested that a discussion of the requirement that a student be enrolled at least half-time to receive FFEL and Direct loans and whether loans should be prorated based on enrollment status might be appropriate to address these concerns. One participant thought that in considering these issues, the Department should distinguish between subsidized and unsubsidized loans and consider giving students more freedom to borrow unsubsidized loans.

One participant noted that students depend on student loans to cover their indirect costs and that students use their Pell Grants for their direct costs. Another participant stated that the Pell Grant is insufficient to cover the direct costs at most institutions except for some community colleges.

A participant suggested that the recalculation requirements in the Pell Grant Program for changes in enrollment status should be modified because the participant believes that the

new return of Title IV aid requirements adequately address the concerns that the recalculation provisions were trying to address.

Another participant expressed an opinion that all of the Title IV programs' payment requirements should be on the basis of credit hours attempted rather than credit hours completed. The participant noted that student financial assistance is available to allow students to pursue their educational objectives and that paying for credits completed takes the risk away from the government but does not motivate students. However, it was also mentioned that encouraging students to complete their coursework is a positive concept, not a negative concept.

One participant suggested that the Department should approach the regulatory issues in the short-term and approach statutory issues in the long-term, because in the participant's view, many of the real problems are regulatory. Another participant asked whether there is a possibility of a fast track negotiated rulemaking session in 2001 if this group comes up with regulatory proposals. Departmental representatives indicated that there is no negotiated rulemaking currently scheduled for this year. Another participant suggested that subregulatory guidance be used as an alternative to negotiated rulemaking. It was stated that although there is a big difference between achieving statutory change as opposed to regulatory change, a blue print for statutory change is needed because the statute contains too many barriers to nontraditional education to ignore.

The 12-Hour Rule

Department staff reported that most participants in the focus groups had suggested eliminating the 12-hour rule and applying the one-day-per-week rule for all types of programs.

Participants discussed whether nonstandard terms should be treated more like standard terms or nonterms. Participants had no preference.

Participants offered no alternatives to the 12-hour rule.

Student-Based Delivery Model

Department staff presented some information and ideas about the development of a student-based delivery model in which student financial assistance would be disbursed as the student needs it or as the student completes credits. They stated that this approach may reduce the risk to Federal funds because all of a student's aid would not be disbursed "up front." Tying student financial assistance to the number of credits that the student completed or the student's progress towards the educational credential accommodates individual start dates and allows nonstandard and nonterms to be treated similarly. However, such an approach also requires the additional administrative burden of ongoing monitoring of a student's progress and could further complicate the process by requiring aid for direct and indirect costs to be disbursed separately.

It was noted that the adoption of a student-based model might increase the Department's comfort level regarding the amount of funds out there at any one time.

Several participants raised a number of concerns such as whether student financial assistance would be calculated based on enrollment status or time, how direct and indirect costs would be handled, how eligibility for subsequent disbursements after the first disbursement would be determined, how the return of Title IV aid requirements interact with a student-based model, and who would use the student-based model.

One participant noted that one of the strengths of this model is that it accommodates students incurring different costs for different types of learning experiences. The participant also felt it accommodates students taking courses at two separate institutions and stated that a student-based model builds in accountability and reduces the amount of funds a school can draw down and pay itself.

A participant noted that the proposed model sounded less flexible in some ways than the current statutory and regulatory requirements.

Participants discussed that additional monitoring of students' progress towards their educational credential would be required.

Another participant questioned the capability of lenders and the Department to handle a student-based delivery system. There are systems implications in developing a new model.

A participant asked whether the student-based model deals with the 12-hour rule, and the Department responded that the student-based model does address some issues of accountability and other areas associated with the 12-hour rule.

Department staff pointed out that a number of details on a student-based disbursement model need to be discussed further and invited participants to assist this effort.

Wrap-up

The participants discussed the extent to which the Department could move more quickly to address short-term problems as well as to develop a long-term strategy. Guidance on the current statutory and regulatory provisions governing nontraditional educational programs for institutions was mentioned as a short-term issue to ensure compliance. Participants noted that if the Department operates with the current statutory language it will not make much progress in addressing the issues surrounding student financial assistance for students enrolled in nontraditional program formats.

Conclusion

The Department recognizes the need for significant policy changes in this area in order to increase access to innovative education programs that increase students' likelihood for success. In its report to Congress on the Distance Education Demonstration Program in January 2001⁴, the Department raised several questions for consideration based on the emerging trends in postsecondary education, its discussions with the community and its experience with the Demonstration Program. Chief among these issues is "Is there an alternative to the '12-hour rule' that would ensure that the amount of instruction is adequate in the variety of ways that academic activity is organized in distance education?" However, the problem extends beyond distance education and includes traditional programs as well as innovative programs geared to meet the needs of working adults.

Over the coming months, the new Administration will work with Congress to carefully consider the options for addressing this important problem, including the community's suggestion to eliminate the 12-hour rule and applying the one-day-per-week rule for all types of programs. At the same time, it will review the existing safeguards and controls for ensuring that the amount of educational instruction is adequate and comparable to that offered in traditional term-based programs.

⁴ The report to Congress was submitted on January 19, 2001. A copy of this report can be obtained on the Department's Web site at <http://www.ed.gov/offices/OPE/PPI/DistEd>