

SUMMARY OF DISTANCE EDUCATION AND INNOVATION

Final Rule

Summary

Distance learning has provided new educational opportunities to millions of Americans who, as a result of their work schedule, family responsibilities, transportation limitations or military deployments cannot enroll in or complete postsecondary education offered in the traditional campus setting. Moreover, distance learning has enabled colleges and universities to partner to expand course offerings available to students, and it has enabled institutions to provide innovative solutions, such as competency-based learning and subscription-based programs, that provide students more flexibility, greater cost savings and that honor the knowledge and skills that adult learners bring with them to the classroom. However, the Department's regulations regarding distance learning had not kept pace with advances in technology and they created tremendous uncertainty for institutions about what kinds of innovations were permissible, including innovations in team-approaches to instruction.

The COVID-19 pandemic has brought renewed attention to the need for postsecondary institutions to expand high-quality learning opportunities through the use of remote and advanced technologies to assist students in reaching their educational goals.

Crafted by a diverse group of experts during the Department's 2019 negotiated rulemaking, these final Distance Education and Innovation regulations establish the right framework to facilitate innovation while maintaining educational quality, as well as important safeguards to protect students and taxpayers. These flexibilities go beyond the temporary waivers offered during the pandemic and provide the certainty institutions need to make longer-term investments in the development of new learning strategies, materials and opportunities. They also respond to Secretary Betsy DeVos's call for institutions, educators, and policy makers to "rethink higher education" and find new ways to expand educational opportunity, demonstrate the value of a postsecondary credential and lifelong learning, and reduce costs for students, schools, and taxpayers.

These final regulations were the result of a months-long negotiated rulemaking effort that began with public hearings. We then engaged a subcommittee of subject matter experts to provide recommendations to negotiators representing the higher education community and related stakeholders. The negotiators considered the subcommittee recommendations and deliberated during four negotiating sessions, ending in consensus language that became the proposed rule. The Department then solicited public comments and made improvements before publishing the final regulation. This final regulation strikes the right balance between fostering innovation and protecting students and taxpayers from waste, fraud, and abuse.

Significant Policy Changes

The final regulations –

- Provide flexibility to distance education, competency-based education (CBE), and other types of educational programs that emphasize demonstration of learning rather than seat time when measuring student outcomes.
- Remove confusion about the distinction between distance education and correspondence courses and more clearly define the requirements of "regular and substantive interaction"

between students and faculty and the permissibility of engaging instructional teams in the delivery of education through distance learning. In addition, given the increasing reliance on mixed-modalities among different courses in a student's program, the new regulations clarify that, when calculating the number of correspondence students, a student is considered "enrolled in a correspondence course" if correspondence courses constitute 50 percent or more of the courses in which the student enrolled during an award year.

- Allow institutions to respond to students' educational needs and potentially shorten the time to degree completion and the cost of completing a credential through direct assessment programs by:
 - Clarifying the requirements for direct assessment programs, including how to determine equivalent credit hours and how to distribute aid to simplify administration, reduce confusion, and protect taxpayers.
 - Limiting the requirement for institutions with strong track records to obtain approval from the Secretary for only the first direct assessment program offered by the school at a given credential level. Institutions with proven track records will still be overseen by accreditors, but the additional Department approval for subsequent programs would be removed.
 - Requiring institutions to report to the Secretary when adding a second or subsequent direct assessment program or establishing a written arrangement for an institution or organization that is not eligible to participate in the Title IV, HEA program to provide more than 25 percent, but no more than 50 percent, of a program. This requirement balances necessary transparency with greater flexibility for institutions to create partnerships, leading to jobs for students.
 - Recognizing the value of "subscription-based programs," and simplifying rules regarding the disbursement of title IV funding to students enrolled in these programs, which allow students to work at their own pace and complete their programs more quickly while paying a flat fee, rather than per credit tuition. The rule would create a new, student-centric system for disbursing title IV, HEA assistance to students in subscription-based programs.
- Require prompt action by the Department on applications by institutions to the Secretary seeking certification or recertification to participate as an eligible institution in the HEA, title IV program. In the past, such applications have been stalled for months or even years.
 - Clarify that the Secretary may deny an institution's application for certification or recertification to participate in the title IV, HEA programs if an institution is not financially responsible or does not submit its audits in a timely manner.
- Add a definition of "juvenile justice facility" to ensure that students incarcerated in a juvenile justice facility continue their eligibility for Pell Grants.
- Allow students enrolled in Title IV, HEA-eligible foreign institutions to complete up to 25 percent of their programs at an eligible institution in the United States. This provision is particularly important for students temporarily unable to attend courses abroad due to the COVID-19 pandemic, for students who wish to accelerate degree completion by taking classes while in the U.S. during school breaks, and enabling students who need to return to the U.S. for other reasons to remain enrolled in postsecondary education and making progress toward credential completion.

- Encourages employer participation in developing educational programs by clarifying that institutions may modify their curricula based on industry advisory board recommendations without relying on a traditional faculty-led decision-making process.
- Simplifies clock-to-credit hour conversions and clarifies that homework time included in the credit hour definition do not translate to clock hours, including for the purpose of determining whether a program meets the Department's requirements regarding maximum program length.
- Encourages institutions to give students equal credit for time spent preparing for and participating in lecture and laboratory courses. For decades students have received less credit for completing laboratory courses than lecture or other courses.
- Clarify, in consideration of the challenges to institutions posed by State's varying minimum program length standards for occupational licensing requirements that an institution may demonstrate for purposes of participating in title IV, HEA programs, a reasonable relationship between the length of a program if the number of clock hours does not exceed either 150 percent of the minimum requirement to work in the State in which the institution is located or 100 percent of the minimum hours in an adjacent State.
- Provide that the Secretary will rely on the accrediting agency or State authorizing agency to evaluate an institution's appeal of a final audit or program review determination by the Department that includes a finding about the institution's classification of a course or program as distance education or the institution's assignment of credit hours.
- Encourage closing institutions to offer quality teach-outs by permitting the application of sanctions to individuals or institutions affiliated with other institutions that closed without executing a viable teach-out plan or agreement.

The Department received 237 comments from the public, most of which were supportive of the proposed rule. A number of comments offered suggestions for improvements, some of which were included in the final rule, including:

- Allowing asynchronous delivery of some courses or portions of courses delivered as part of clock hour programs. The COVID-19 pandemic coupled with new technologies have encouraged States, accrediting agencies, and licensing boards to reconsider earlier restrictions on the use of asynchronous distance learning technologies to deliver portions of programs that are typically considered to be hands-on programs. Commenters suggested that the Department permit the use of asynchronous learning in clock-hour programs, and the Department agreed, as long as licensing bodies permit the use of asynchronous learning and will include clock hours earned through asynchronous learning toward the clock hour instruction requirements.
- Clarifying that subscription-based programs are not limited to direct assessment programs. The proposed rule limited subscription models to direct assessment programs; however, commenters correctly pointed out that not all competency-based education programs use direct assessment. The Department believes that this accountable payment structure might be useful to traditional ground-based programs, too.
Removing the "prior experience" requirement from written arrangements. Commenters noted inconsistencies between the Department's recently promulgated Accreditation and State Authorization regulation, and the proposed Distance Learning and Innovation regulation

regarding similar prior experience requirements. The Department changed this regulation to align with the already finalized accreditation regulation, and in recognition that a prior experience requirement would have presented an unworkable catch-22 situation because the necessary experience is often difficult to obtain without regulatory permission to do so. The prior experience provision would have been mostly unenforceable and is seen as a barrier to promoting competition.

The regulations will take effect July 1, 2021, but institutions may voluntarily implement any or all provisions upon publication in the Federal Register.