

SUMMARY OF NOTICE OF PROPOSED RULEMAKING ON DISTANCE EDUCATION AND INNOVATION

[Proposed Rule](#)

Summary and Need for Regulatory Reform

Due to the COVID-19 pandemic, large numbers of postsecondary institutions have begun to offer distance education opportunities in order to continue instruction in their educational programs during the national emergency. The unexpected events of the last several weeks underscore the need for all institutions to develop, establish, and maintain the capacity to use advanced technologies to assist students in reaching their educational goals. To help students and schools, the Department's regulations must be flexible enough to promote this needed innovation, yet stringent enough to ensure educational quality and taxpayer accountability. Fortunately, the Department's recent negotiated rulemaking efforts and the resulting consensus rule on Distance Education and Innovation establish the right framework to facilitate this needed innovation while maintaining educational quality, as well as important safeguards to protect students and taxpayers.

Crafted by a diverse group of experts during the Department's 2019 negotiated rulemaking, the Department's proposed Distance Education and Innovation regulations enhance educational quality and reduce barriers to innovation while maintaining safeguards to limit the risks to students and taxpayers. These proposed regulations build upon Secretary of Education 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.

The proposed Distance Education and Innovation rule was the result of a months-long negotiated rulemaking effort that began with public hearings and engaged a subcommittee of subject matter experts to formulate recommendations that were ultimately considered by a panel of representatives from the higher education and consumer protection communities. Three subcommittee meetings yielded recommendations on this proposed rule, as well as two other proposed rules, that were considered by negotiators during four negotiating sessions. Negotiators reached consensus on the language included in this proposed rule, and the consensus language strikes the right balance between fostering innovation and protecting students and taxpayers from waste, fraud, and abuse.

Significant Policy Changes

The proposed 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 over whether an institution offering online courses is a distance education course eligible for HEA, title IV aid by specifying the requirements of "regular and substantive" interaction between students and instructors. Confusion over this statutory requirement has stalled the growth of new programs, limited opportunities for students, and discouraged innovation in learning.
 - Amend the definitions of "distance education" and "correspondence course" to account for changes in distance education technology and the types of programs offered by institutions, such as competency-based education programs.
 - 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 through direct assessment programs.
 - Clarify and simplify the requirements for direct assessment programs, including how to determine equivalent credit hours for such programs and the distribution of aid to simplify administration, reduce confusion, and protect taxpayers.

- Permit institutions with strong track records to obtain approval from the Secretary for only the first direct assessment program offered by the school. Institutions with proven track records will still be overseen by accreditors, but the additional, often lengthy, Department approval for subsequent programs would be removed.
- Require 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.
- Recognize “subscription-based 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 proposed 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.
- 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 to eliminate confusion about the inclusion of homework time in the clock-hour determination. The Department also expresses concern in preamble language about the widespread practice of giving students less academic credit for laboratory courses than lecture courses, despite the fact that laboratory courses often have the same or even more time-consuming requirements as lecture courses.
- Clarify, in consideration of the challenges to institutions posed by minimum program length standards associated with occupational licensing requirements, which vary from State to State, that an institution may demonstrate a reasonable relationship between the length of a program if the number of clock hours in the program 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 requirements established by an institution’s 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 clarifying that an institution is not financially responsible if a person who exercises substantial ownership or control over an institution also exercised substantial ownership or control over another institution that closed without executing a viable teach-out plan or agreement.

The Department will publish the NPRM in the Federal Register for a 30-day public comment period. Following the comment period, the Department will publish a final regulation prior to November 1, 2020.