

August 23, 2024

James Kvaal  
Under Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Docket No. [ED-2024-OPE-0050](#)

Dear Under Secretary Kvaal:

We write in response to the U.S. Department of Education's ("the Department") proposed rule on Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs. Our comments focus on the proposed rules on distance education and return of Title IV funds, specifically outlining some of the impacts these proposals may have on institutions of higher education and the students whom they serve. The Center for Higher Education Policy and Practice (CHEPP) is a non-partisan higher education research, policy, and advocacy organization grounded in the experiences of higher education learners and practitioners, affiliated with Southern New Hampshire University (SNHU).

We appreciate the proposed additional data collection on distance education programs. Having more comprehensive data on persistence and completion for students enrolled in part, or exclusively online will allow for more accurate reporting on how learners are seeking and enrolling in multi-modal higher education pathways. Additionally, such data will help inform continuous improvement and research on best practice in the future. We also support the changes proposed by the Department to create new virtual locations. With learners increasingly seeking out and institutions expanding online program offerings, this change will help institutions better facilitate different program offerings, as well as accurately report student enrollment and outcomes in those programs and disburse Title IV financial aid accordingly.

Our following comments are related to Return of Title IV funds and the proposed changes to the definition of Academic Year. We urge the Department to consider the following recommendations in the final regulations.

## **Return of Title IV Funds (R2T4)**

While the proposed regulations focus on distance education, the Department should have the same attendance standards for in person and distance education programs. The Department clearly presumes that in person settings lend themselves to stronger interaction. However, distance education programs often have more robust and effective regular student interaction built into program delivery, such as intensive advising with proactive outreach, required course discussion boards, and more. In addition to these instructional practices, some institutions already track student engagement in distance education courses to determine unofficial withdrawal from a course, using data points such as assignment submissions and discussion board participation. Existing processes demonstrate while it may be possible to collect attendance data, institutions currently are not necessarily producing, or capable of producing what the Department is aiming to capture. In most cases, new requirements will necessitate institutional and learning management systems (LMS) changes.

Currently, LMS capabilities differ greatly across institutions of higher education, and sometimes by different programs within the same institution. With that in mind, the Department must provide adequate time for institutions to make updates to their systems. As noted above, most systems are capturing learner interaction with course content. However, that data is not currently used in manner suggested by the proposed regulations. The Department must be clear on which specific data points will be required to comply with final regulations on attendance taking and related timeframes so that institutions can update their contracts with and set clear expectations for their LMS providers. The vagueness and lack of information in the proposed regulations on what attendance taking would require makes providing complete comments on this topic challenging. We urge the Department to seek additional insights on what is needed to comply with this requirement from institutions, as well as the functionality of LMS.

The proposed regulations also ignore the needs of “new traditional learners<sup>1</sup>” served in online programs, particularly ones that are asynchronous. These learners enroll in online and hybrid programs because of their multiple obligations outside of academics, including full time jobs, active military service, parenting, and other caregiving responsibilities. These learners may have various levels of engagement throughout a semester and adjusting how and when they are able to progress through their courses supports their persistence and degree completion. New traditional learners also often enroll in direct assessment programs

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<sup>1</sup>CHEPP, “The New Traditional Learner: Redesigning Higher Education to Drive Learner Success,” [https://www.chepp.org/wp-content/uploads/2023/04/CHEPP\\_NEW-TRADITIONAL-STUDENT\\_WHITE-PAPER.pdf](https://www.chepp.org/wp-content/uploads/2023/04/CHEPP_NEW-TRADITIONAL-STUDENT_WHITE-PAPER.pdf)

which fall outside the scope of seat time and credit hour in favor of measuring a learner's skills and knowledge for course progression instead of time. We urge the Department to exempt direct assessment programs from its proposed attendance taking requirements and recognize the learning needs of this population in implementing new attendance taking requirements.

### **Academic Year**

Lastly, we urge the Department to clarify that the proposed changes to the definition of Academic Year do not impact current direct assessment regulations (668.10(a)(1)). The proposed changes to Academic Year specifically reference credit hour programs, which the Department names as a conforming change with proposed rules related to asynchronous learning and clock hour programs. Current direct assessment regulations reference both credit and clock hours. Given that the direct assessment language specifically says direct assessment is used "in lieu of" both credit and clock hours and that direct assessment was not part of the negotiated rulemaking, we believe the changes to Academic Year do not impact direct assessment programs. However, we urge the Department to state that there is no impact on direct assessment for clarity in the field.

Thank you for your consideration of our comments on these matters.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Fasteau".

Jamie Fasteau  
Executive Director