

BREAKOUT SESSION #12

Regulatory Update - Distance Education

Greg Martin

U.S. Department of Education

2020 Virtual FSA Training Conference for Financial Aid Professionals

AGENDA

- 01 Introduction
- 02 History and Implementation
- 03 Overview of Major Provisions

INTRODUCTION

- Notice of Proposed Rulemaking (NPRM) published April 2, 2020
- Comment period ended May 4, 2020
- Final Rules published September 2, 2020
- Effective July 1, 2021
- Early implementation of all provisions

ACADEMIC ENGAGEMENT

CURRENT REGULATIONS

- No definition of academic engagement in regulation
- RT24 regulations in 34 CFR §668.22 set requirements for activities that may be considered “academic attendance” or “attendance at an academically-related activity”
 - Used as the basis for establishing a student’s withdrawal date
 - Pertained only to 34 CFR § 668.22

ACADEMIC ENGAGEMENT

ACADEMIC ENGAGEMENT

- Most of 34 CFR §668.22(I)(7) relating to requirements for academic attendance and attendance at academically-related activities was incorporated into a definition of “academic engagement” under 34 CFR part §600
 - Applicable to R2T4 and other applications within 34 CFR part §600 and 34 CFR part §668
 - Specifies that academic engagement includes interactive tutorials or webinars
 - Clarifies that merely logging into a class or online tutorial is not academic engagement

CLOCK HOUR

CLOCK HOUR DEFINITION

- 50 to 60 minutes in a 60-minute period of attendance in a synchronous or asynchronous class, lecture, or recitation where there is opportunity for direct interaction between the instructor and students; or an asynchronous learning activity involving academic engagement in which the student interacts with technology that can monitor and document the amount of time that the student participates in the activity.
 - Clarifies that programs offered via distance education may be measured in clock hours
 - Requires that institutions be capable of monitoring a student's participation during 50 out of 60 minutes in each hour

CREDIT HOUR

CREDIT HOUR DEFINITION

- An amount of student work defined by an institution, as approved by the institution's accrediting agency or State approval agency, that is consistent with commonly accepted practice in postsecondary education
- Reasonably approximates not less than :
 1. One hour of classroom or direct faculty instruction and a minimum of two hours of out-of-class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different period of time; or
 2. At least an equivalent amount of work as required in paragraph (1)(i) of this definition for other academic activities as established by the institution, including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours
- May take into account a variety of delivery methods, measurements of student work, academic calendars, disciplines, and degree levels.

CORRESPONDENCE COURSE/STUDENT

DEFINITIONS

- Correspondence course
 - Definition refers to “instructors” rather than “the instructor” and recognizes the use of multiple instructors; also recognizes the team teaching approach
- Correspondence Student
 - Defined as a student whose enrollment in correspondence courses constitutes more than 50 percent of the courses in which the student is enrolled during the award year
 - Current regulations do not define a correspondence student

INSTITUTIONAL ELIGIBILITY

REQUIREMENT FOR ED TO MAKE TIMELY ELIGIBILITY/CERTIFICATION DECISIONS

- ED must take prompt action on any materially complete initial application or reapplication submitted
- If ED does not make a determination to grant or deny certification within 12 months of the expiration of an institution's current period of participation, the institution will automatically be granted renewal of certification
 - Certification may be provisional

DISTANCE EDUCATION

DEFINITION

- Definition refers to “the instructor or instructors” rather than simply “the instructor”
- Eliminates references to the various types of media described under the current definition, e.g., DVDs, CD-ROMs etc., and replaces those references with the phrase “other media”
- Defines an instructor as an individual responsible for delivering course content and who meets the qualifications for instruction established by the institution’s accrediting agency

DISTANCE EDUCATION

SUBSTANTIVE INTERACTION

- Substantive interaction would be defined under distance education as engaging students in teaching, learning, and assessment, consistent with the content under discussion, and including two of the following:
 1. Providing direct instruction
 2. Assessing or providing feedback on a student's coursework
 3. Providing information or responding to questions about the content of a course or competency
 4. Facilitating a group discussion regarding the content of a course or competency, or
 5. Other instructional activities approved by the institution's or program's accrediting agency

DISTANCE EDUCATION

REGULAR INTERACTION

- Institutions must ensure regular interaction between a student and an instructor or instructors
 - Prior to the student's completion of a course or competency, provide the opportunity for substantive interactions with the student on a predictable and regular basis commensurate with the length of time and the amount and the amount of content in the course or competency
 - Monitor the student's academic engagement and success and ensure that an instructor is responsible for proactively engaging in substantive interaction with the student when needed, or upon request by the student

INCARCERATED STUDENT

CLARIFICATION OF INCARCERATED STUDENT

- A student who is serving a criminal sentence in a Federal, State, or local penitentiary prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution.
- A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.
- For purposes of Pell Grant eligibility, a student incarcerated in a juvenile justice facility or local or county facility, is not considered to be incarcerated in a Federal or State penal institution regardless of which governmental entity operates or has jurisdiction over the facility

DIRECT ASSESSMENT

DEPARTMENT APPROVAL REQUIRED

- Approval required for the institution's first direct assessment program
- Approval required when the institution offers a direct assessment program at a different level of offering (e.g. a first direct assessment master's degree program following experience offering direct assessment bachelor's degree programs) than what was previously approved
- Additional direct assessment programs at the same credential level would not require Department approval but must be reported within 10 days of the change
- Institution is required to explain how it excludes credit earned through prior learning assessment from consideration of a student's eligibility for title IV

DIRECT ASSESSMENT

FLEXIBILITIES

- Permits preparatory coursework and coursework required by a State for teacher certification to be offered using direct assessment
- Allows programs offered in part through credit or clock hours, and in part through credit hour equivalencies or clock hour equivalencies
- Requires an institution to establish a methodology to reasonably equate each module in the direct assessment program to either credit hours or clock hours

SUBSCRIPTION-BASED PROGRAMS

CHARGES ON A SUBSCRIPTION BASIS

- Standard or nonstandard-term program in which the institution charges a student for each term on a subscription
 - Coursework would not be required to begin or end within a specific timeframe in each term
 - Expectation would be that the student completes a specified number of credits during the term
 - Students would have to complete a cumulative number of credits (or the equivalent) during or following the end of each term before receiving subsequent disbursements of title IV funds
- Students would have to complete a cumulative number of credits (or the equivalent) during or following the end of each term before receiving subsequent disbursements of title IV funds

SUBSCRIPTION-BASED PROGRAMS

ELIGIBILITY FOR SUBSEQUENT DISBURSEMENTS

- Establishes a method of determining the number of credit hours (or the equivalent) that a student in a subscription-based program must complete before receiving subsequent disbursements
 - Determine (for each term) the minimum number of credit hours (or the equivalent) for the student's enrollment status for that period
 - Add together (following the determination above) the number of credit hours (or the equivalent) determined for each term that the student enrolled and attended (excluding the current and most recently attended terms)

SUBSCRIPTION-BASED PROGRAMS

RATIONALE

- Reasons for the proposed method to determine when a student in a subscription-based program is eligible for a subsequent disbursement
 - Following non-term disbursement rules is more complicated for a CBE program than for a non-term program with strict progression. Current requirements for disbursement in term-based and non-term programs make it difficult to implement self-paced CBE programs. Requiring CBE coursework to begin and end within a specific timeframe limits students' flexibility to work at their own pace – may artificially delay a student's progress if the institution was required to deny his/her request to begin a new competency near the end of a term.
- Proposed method would allow treating a subscription period as a payment period

SUBSCRIPTION-BASED PROGRAMS

SUBSCRIPTION-BASED DISBURSEMENT METHOD

- Requires a student to complete a certain number of competencies in past subscription periods in order to receive title IV funds in subsequent subscription periods
- No requirement for completion of specific competencies in a subscription period
- Permits coursework that overlaps or extends beyond the payment period start date and end dates

SUBSCRIPTION-BASED PROGRAMS

SUBSCRIPTION-BASED DISBURSEMENT METHOD

- Allows title IV disbursements at the start of a payment period
- Requires student to have completed the number of credit hours (or equivalent) associated with student's enrollment status in prior payment periods
- Offers flexibility over current rules for all self-paced programs that require completion of one-half the hours and weeks in an academic year for a second disbursement

SUBSCRIPTION-BASED PROGRAMS

RESTRICTIONS ON SUBSCRIPTION-BASED PROGRAMS

- Limited to programs that charge students for each term on a subscription basis
- Expectation that the student complete a specified number of competencies during a term
- Repeated coursework may not be included in a student's enrollment status
- Institution must establish a single enrollment status that would apply to a student throughout his or her program

UPDATING APPLICATION INFORMATION

ADDITIONAL UPDATES/REPORTING REQUIREMENTS

- Addition of a second or subsequent direct assessment program
- Establishment of a written arrangement for an ineligible institution or organization to provide more than 25 percent of a program pursuant to 34 CFR §668.5(c)
- Must be reported on the Application to Participate no later than 10 days after the change occurs

WRITTEN ARRANGEMENTS

CLARIFICATIONS/FLEXIBILITIES

- Workforce responsiveness : institutions may align or modify curriculum or academic requirements in order to meet the recommendations or requirements of industry advisory boards that include employers, recognized industry standards and organizations, or industry recognized credentialing bodies, including making governance or decision-making changes as an alternative to allowing or requiring faculty control or approval or integrating industry-recognized credentials
- Percentage of a program offered by an ineligible entity =
$$\frac{\text{number of credit or clock hours provided by the ineligible entity}}{\text{number of credit or clock hours in the program}}$$
- Written arrangements do not apply to the internship or externship portion of a program if the internship or externship is governed by accrediting agency standards, or, in the case of an eligible foreign institution, the standards of an outside oversight entity, such as an accrediting agency or government entity, that require the oversight and supervision of the institution, where the institution is responsible for the internship or externship and students are monitored by qualified institutional personnel

CLOCK-TO-CREDIT-HOUR CONVERSION

CONVERSION FORMULA

- Semester or trimester hour must include 30 clock hours of instruction (30:1)
- Quarter hour must include at least 20 clock hours of instruction (20:1)
- Outside hours and/or homework are not factors in the conversion

PROGRAM PARTICIPATION AGREEMENT

REASONABLE RELATIONSHIP BETWEEN PROGRAM LENGTH AND ENTRY LEVEL REQUIREMENTS

- Considered reasonable if the number of clock hours in the program does not exceed the greater of:
 - One hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; or
 - The minimum number of clock hours required for training in the recognized occupation for which the program prepares the student as established in a State adjacent to the State in which the institution is located

SATISFACTORY ACADEMIC PROGRESS

SAP FOR SUBSCRIPTION-BASED PROGRAMS

- No SAP pace calculation is required
- Student is not able to receive a subsequent disbursement until the credit hours (or the equivalent) associated with the student's enrollment status in all prior payment periods are completed
 - Ensures students may not continue to receive title IV aid without progressing
 - Students are allowed a single additional subscription period to catch up without losing eligibility for title IV aid

SATISFACTORY ACADEMIC PROGRESS

NON-TERM CREDIT-HOUR AND CLOCK-HOUR PROGRAMS

- No SAP pace calculation is required
- Students are not be able to receive a subsequent disbursement until one-half the hours and weeks in the academic year are successfully completed

SATISFACTORY ACADEMIC PROGRESS

MAXIMUM TIMEFRAME

- Maximum timeframe is still required for all programs
- Undergraduate programs measured in credit hours have the option to express maximum timeframe in calendar time

SATISFACTORY ACADEMIC PROGRESS

GPA REQUIREMENTS UNCHANGED

- Applicable to all programs
- SAP policy must specify the GPA (or comparable assessment measured against a norm) a student is required to achieve at each evaluation
- Reviewed at each evaluation point
- For a program of than two academic years (4 semesters/6 quarters), by the end of the second academic year a student must have a GPA of at least a “C” or its equivalent, or an academic standing consistent with graduation requirements

FINAL AUDIT/PROGRAM REVIEW DETERMINATION

APPEALS

- Appeals of final audit determinations (FADs) or final program review determination (FPRDs) resulting from an institution's classification of a course or program as distance education, or the institution's assignment of credit hours; ED will rely on:
 - The requirements of the institution's accrediting agency or State approval agency regarding qualifications for instruction, and
 - The requirements of the institution's accrediting agency or State approval agency to determine if the work associated with the institution's credit hours aligns with commonly accepted practice in postsecondary education in applying the definitions of "distance education" and "credit hour"

RETURN OF TITLE IV FUNDS (R2T4)

SUBSCRIPTION-BASED AND NON-TERM PROGRAMS

- Student in a non-term program or a subscription-based program is considered withdrawn if he/she is unable to resume attendance within a payment period or period of enrollment for more than 60 calendar days after ceasing attendance
- Non-term and subscription-based programs are never considered to be offered using modules
- For non-term and subscription-based programs, the student would be permitted to change his or her date of return if the student's program permits resumption of attendance no later than 60 calendar days after the student ceased attendance
- Student enrolled in subscription-based or non-term programs can only avoid withdrawal through a written confirmation of future attendance if he/she indicates the intent to resume attendance during the same payment period or period of enrollment
 - Student may change the date of return that begins later in the same payment period as long as it is in writing and prior to the previously confirmed date

RETURN OF TITLE IV FUNDS (R2T4)

NOT CONSIDERED WITHDRAWN

- Student completes all the requirements for graduation from the program before completing the number of days or hours in the period that he/she was scheduled to complete
- For a program offered in modules, the student completes one module that includes 49 percent or more of the number of days in the payment period, or combination of modules that when combined contain 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules ; or
- Student successfully completes coursework equal to or greater than the coursework required for the institution's definition of a half-time student for the payment period

RETURN OF TITLE IV FUNDS (R2T4)

APPROVED LEAVES OF ABSENCE (LOA)

- Subscription-based programs are added to the types of programs that do not require the institution to permit the student to complete coursework he or she began prior to the leave of absence to grant an approved leave of absence

RETURN OF TITLE IV FUNDS (R2T4)

ORDER OF RETURN

1. Unsubsidized Federal Direct Stafford Loans
2. Subsidized Federal Direct Stafford Loans
3. Federal Direct PLUS Loans
4. Federal Pell Grants
5. Iraq and Afghanistan Service Grants
6. FSEOG
7. TEACH Grants

RETURN OF TITLE IV FUNDS

NUMBER OF DAYS A STUDENT IS SCHEDULED TO ATTEND

- Student in a program offered in modules is scheduled to complete the days in a module if the student's coursework in that module was used to determine the amount of the student's eligibility for title IV, HEA funds for the payment period or period of enrollment.
- Institution may use the student's schedule at a fixed point to determine the number of days the student is scheduled to attend during the period for R2T4 purposes; subsequent fluctuations have no effect
 - Regulations do not prescribe what this date must be; Pell recalculation dates, census dates, or other dates determined by the institution are acceptable and an institution may use multiple dates

FOREIGN INSTITUTIONS

WRITTEN ARRANGEMENTS ELIGIBLE FOREIGN INSTITUTIONS

- May execute a written arrangement with an eligible U.S. institution for that institution to provide no more than 25 percent of a student's eligible program at the foreign institution
- May execute a written arrangement with an ineligible foreign institution to provide no more than 25 percent of a student's eligible program, provided that institution meets the requirements in paragraphs (1)(iii) and (iv) of the definition of "foreign institution" in 34 CFR § 600.52

FOREIGN INSTITUTIONS

LIMITATIONS ON ATTENDANCE IN THE UNITED STATES

- May permit students to complete up to 25 percent of their program by enrolling in the coursework, research, work, or special studies offered by an eligible U.S. institution or participating in an internship or externship provided by an ineligible organization as described in 34 CFR § 668.5(h)(2)
- Independent research done by an individual student in the United States for not more than one academic year is permitted, if it is conducted during the dissertation phase of a doctoral program under the guidance of faculty, and the research is performed only in a facility in the United States
- Stacking the 25 percent allowance and the one academic year allowed for dissertation research is not permitted; doctoral students taking advantage of both provisions are limited to one year of study /research in the United States

AUDIT/PROGRAM REVIEW

FINAL AUDIT AND PROGRAM REVIEW DETERMINATIONS

- Where a final audit or program review determination results from:
 1. The institution's classification of a course or program as distance education or
 2. The institution's assignment of credit hours
- The Department relies upon the requirements of the institution's accrediting agency or State approval agency regarding qualifications for instruction and whether the amount of work associated with the institution's credit hours is consistent with commonly accepted practice in postsecondary education, in applying the definitions of "distance education" and "credit hour" in 34 CFR § 600.2

THANK YOU

CONTACT INFORMATION

Contact Information:

Greg Martin

Director, Policy Development Group

Office of Postsecondary Education

U.S. Department of Education

gregory.martin@ed.gov

202-453-7535