

Long-Awaited Updates to Distance Education and R2T4 Rules Finalized

by Anne Gross

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With a focus on reducing barriers to innovation, the Department of Education (ED) issued [final regulations](#) on September 2 updating its rules on distance education, withdrawal and return of Title IV funds, some definitions, and several other topics. The rules were drafted as part of a negotiated rulemaking process that began in January 2019 and ended with consensus agreement on proposed rules in April of that year. Other priorities intervened and ED delayed publishing the [notice of proposed rulemaking](#) until April 2, 2020.

Under the master calendar provisions in the Higher Education Act, Title IV rules that ED publishes by November 1 may take effect no earlier than the following July 1. The Department may allow institutions to implement changes earlier, however, and has chosen to do so in this case. Colleges and universities may implement the new rules at their discretion. ED promises to publish a separate notice on the timing of implementation soon.

Key provisions in the final rules are summarized below.

New or Modified Definitions

A number of new or revised definitions are provided to address distance education, innovation, and codify ED's past guidance. In addition, references to outdated technologies and programs are eliminated.

Academic Engagement:

The new rules establish a definition of academic engagement to standardize the activities that verify student attendance for use in the return of Title IV (R2T4) rules and elsewhere. The definition is based on the criteria for "academic attendance" and "attendance at academically related activities" in the current R2T4 regulations with some refinements.

Clock hour:

Clock hours earned through distance education may be taught through synchronous (codifying existing policy) or asynchronous (new) instruction if permitted by licensing boards or other regulatory entities.

Credit hour:

Codifies the flexibility provided in [Dear Colleague Letter](#) GEN-11-06 to address educational delivery models that are not based on seat time.



"The maximum time frame for undergraduate credit-hour programs may now be expressed in calendar time in addition to credit hours, as under the current rules."

Distance education and correspondence courses:

Continues to differentiate between "distance education" and "correspondence courses", while allowing team approach to instruction and clarifying that if the institution provides opportunities for interaction, students do not need to take part in each one.

Subscription-based program:

Defines a subscription-based program where the institution charges a student for a term (standard or nonstandard) with the expectation that a certain number

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of credit hours will be completed (but without a specific time frame for completion). Students must complete the requisite credit hours (or the equivalent) before receiving another disbursement. While ED originally planned to restrict the subscription-based method of disbursement to direct assessment programs, it recognized there would be unintended consequence to competency-based programs offered in credit hours, and concluded the disbursement method may be used for all types of programs. Among other provisions specific to subscription-based programs, repeat coursework is not eligible for federal aid, and the revised satisfactory academic progress rules drop the pace requirement for such programs.

Week of instructional time:

Adds a new part to the existing definition for programs using asynchronous coursework through distance education or correspondence courses as a week in which instructional material, other resources, and

instructor support are made available to students by the institution. No change for traditional educational programs.

Direct Assessment Programs

The definition of direct assessment program is simpler, with more emphasis on meeting the requirements of the institution's accreditor and state approval agency. Some restrictions on offering remedial coursework, prerequisites for an eligible program, or teacher certification programs have been removed, if the institution has approval to offer direct assessment programs and the coursework is consistent with state and accreditor requirements.

Under the new rules, an institution will only need approval from ED for its first direct assessment program at a given academic level. Schools will need to notify ED when they add more programs, allowing ED to track the growth in such program offerings. ED believes that this will "encourage institutions that have demonstrated the ability to design and operate a direct assessment program to expand that model of instruction and enables institutions to respond more quickly to student and workforce needs."

Certification of Institutional Eligibility and New Programs

In a departure from long-standing ED regulatory policy, ED added language to the rules on applying for eligibility to participate in Title IV requiring the Secretary "to ensure

prompt action" on institutional applications and reapplications. ED's historical position has been that the agency does not regulate itself.

To encourage new programs, the new rules:

- Eliminate a current provision that allowed ED to tell an institution up to 30 days before a new educational program was scheduled to start that it needed approval from ED to be eligible for Title IV.
- Provide for automatic renewal of an institution's recertification for Title IV participation, if the institution submits a materially complete application no later than 90 days before its Program Participation Agreement (PPA) expires, and ED has not made a decision to grant or deny within 12 months of that expiration date.

Return of Title IV Funds

Ten years ago, ED revised its regulations for return of Title IV funds (R2T4) for students enrolled in classes taught in modules. ED had realized that some schools were skirting the R2T4 process by having students complete a short, one-credit module at the beginning to the term. Now, recognizing that the current rules have resulted in uneven treatment, ED is tweaking how the number of days of attendance are counted when a student withdraws from a program offered in modules. ED has also made new distinctions between students enrolled in standard or nonstandard-term

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programs and those in non-term or subscription-based programs.

Under the revised rules, in a program offered in modules (which may only be term-based), a student will not be considered to have withdrawn if the student successfully completes (1) one or more modules that include 49 percent or more of the number of days in the payment period or (2) coursework equal to or greater than that required of a half-time student. Note that:

- When counting days in the payment period, scheduled breaks of five or more consecutive days and all days between modules (or combination of modules) should be excluded.
- In determining the number of days in the payment period that the student is scheduled to attend (the denominator), schools should use all modules that were included in determining the student's eligibility for Title IV funds for the term (payment period). In the preamble to the final rules, ED says it expects schools to use the student's schedule at a fixed point. Schools have discretion to determine what that point will be such as a census date or its Pell recalculation date. This avoids treating students differently based on when they dropped subsequent modules.

- A student must earn a passing grade in at least one module to meet the "successfully complete" requirement. If a student has all incompletes or failing grades, at least one incomplete must be converted to a passing grade before the date that the school is required to perform an R2T4 calculation. This is a different standard than used for students enrolled in term-based programs with no modules in which an earned "F" is sufficient to fulfill all days scheduled to complete and not require an R2T4 calculation.

A student in a standard or nonstandard-term program who, after ceasing attendance in a module, is not scheduled to begin another course within 45 days is considered withdrawn. A student in a non-term or subscription-based program has 60 days to resume. In both cases, a student on an approved leave of absence is not considered to have withdrawn.

The new rules provide that a student who meets all requirements for graduation before completing the days or hours that the student was scheduled to attend is not considered to have withdrawn.

FAS has prepared a version of the revised R2T4 rules which tracks all additions and deletions.

Satisfactory Academic Performance

The maximum time frame for undergraduate credit-hour programs may now be expressed in calendar time in addition to credit hours, as under the current rules.

Other provisions in these rules address program participation agreements, clock-to-credit hour conversions, written agreements with other entities to provide education programs, and when students attending foreign institutions study in the U.S.

Questions?

If you have specific questions about these updates, email them to our Compliance and Policy Team at Info@financialaidservices.org.

Also, there will be dedicated sessions on these topics at the Federal Student Aid (FSA) Virtual Training Conference in December. The conference is free, but registration is required. Learn more at www.fsaconferences.ed.gov.