

## THE U.S. DEPARTMENT OF EDUCATION'S PROPOSED RULE ON DISTANCE EDUCATION, RETURN OF TITLE IV FUNDS, AND THE FEDERAL TRIO PROGRAMS

### Background

The Department of Education released [a proposed rule](#) to amend the regulations regarding distance education, the return of Title IV funds process, and the Federal TRIO programs. This proposed rule is the result of a [negotiated rulemaking process](#) that took place between January and March of this year.

During the negotiated rulemaking process, the main [negotiating rulemaking committee](#) considered the following five topics:

- Accreditation (no consensus reached);
- Cash management (no consensus reached);
- Distance education (no consensus reached);
- Return of Title IV Funds (no consensus reached); and
- State authorization (no consensus reached).

A subcommittee was formed to revise the regulations regarding the Federal TRIO programs, and they reached consensus on this topic. If no consensus is reached, the Department can draft the regulations as it wishes. If consensus is reached, then the Department has an obligation to maintain the integrity of the language agreed upon by the negotiators.

While six overall issue topics were considered, this proposed rule only advances three issues. The public will have 30 days to comment on the proposed regulations once they are formally published in the *Federal Register*.

### Proposed Rule Summary

#### Distance Education

The definition of distance education can be found in Section 103(7) of the *Higher Education Act of 1965* (HEA). The Department proposes to amend the regulations regarding distance education and those changes can be found below.

- *New definition of additional location.* The Department proposes to add a new definition of additional location that requires institutions to establish a virtual additional location if they offer 100 percent of a program online. This also includes programs that have mandatory on-campus or residential periods of 90 days or less.
- *New definition of clock hour.* The Department removes the ability of clock hours offered through distance education to count towards a student's eligibility for student aid if those clock hours were completed through asynchronous learning.

- *Definition of distance education course.* A definition of distance education course is created, clarifying that a distance education course is a course offered exclusively through distance education despite in-person, non-instructional requirements that include orientation, testing, academic support services, or residency experiences.
- *Academic year definition amended.* The definition of academic year is amended to limit asynchronous coursework that can count towards an institution's definition of an academic year to coursework offered in credit-hour programs.
- *Requirement to report enrollment in distance education programs.* Regarding institutional reporting and disclosure requirements, the Department proposes requiring institutions to report enrollment in distance education or correspondence courses.

## Return of Title IV Funds

Return of Title IV funds (R2T4) can be found in Section 484B of the HEA. The Department makes the following proposed changes below.

- *New terms for borrowers to repay their credit balances.* The Department proposes allowing student loan borrowers the ability to repay any funds disbursed to them through a repayment plan under the terms of their promissory note instead of being required to pay loan funds immediately.
- *New student withdrawal option for institutions.* An institution is given the option to not consider a student to have withdrawn from a program if the following four metrics are met:
  - the institution never considers the student as attending courses for the semester;
  - the institution returns all Title IV funding that was dispersed to the student;
  - the institution refunds all charges to the student for the semester; and
  - the institution writes off, or cancels, any balanced owed by the student in the current academic year due to the R2T4 process.
- *Clarification of withdrawal date for students.* Institutions would be required to document a withdrawal date for students who withdrew from their programs within 14 days of the student's last date of attendance.
- *Attendance status mandated.* The Department proposes to mandate that institutions take attendance in their distance education courses, except for doctoral dissertation research courses, for the purposes of the R2T4 calculation.
- *The addition of eligible prison education programs.* Institutions can approve leave of absences as long as certain conditions are met; however, clock-hour, non-term credit hour, and subscription-based programs are exempt. The Department is proposing to add eligible prison education programs to this list of exemptions.
- *More precise measure of student attendance.* Institutions would be required to consider the date that a student actually began their coursework when performing R2T4 calculations instead of the number of clock hours scheduled to be completed as of the student's withdrawal date in the semester.
- *Clarification regarding programs offered in modules.* For those programs that are offered in modules, an institution would be required to only hold a student accountable to completing the

days in a module when a student actually begins attendance in the module instead of simply basing it on their enrollment in the program.

## Federal TRIO Programs

The Federal TRIO programs are located in Section 402A-402H of the HEA. Of the nine TRIO programs, the following programs are proposed to be amended: Talent Search, Educational Opportunity Centers, Upward Bound, Upward Bound Math-Science, and Veterans Upward Bound. The Department makes the following proposed changes below.

- *Expanded opportunity for students to access TRIO programs.* For each aforementioned TRIO program, the Department proposes to expand eligibility by allowing students who are enrolled in, or seek to enroll in, a high school that is located in the United States, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to access the TRIO programs if they do not meet any other eligibility criteria already in the regulations. This revision would expand access to Federal TRIO Programs to undocumented students. A student will not have access to a cash stipend if this expanded eligibility criteria is used.