

Proposal from Jillian Klein (Proprietary Institutions of Higher Education)
on treatment of Title IV funds when a student withdraws (§ 668.22(b)(3)(i))

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The Department proposes requiring institutions to take attendance in distance education programs for R2T4 purposes to increase the accuracy of R2T4 calculations in such programs. The language proposed below (blue text) to the Department's existing regulatory proposal (red text) would better align with the Department's intent, as clarified during negotiations, and would help prevent miscalculations that would disadvantage students in certain programs.

Proposed Language (Section 668.22(b)):

(b) Withdrawal date for a student who withdraws from an institution or a course that is required to take attendance.

(3)

(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance;
~~or~~

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.~~;~~~~or~~

~~(D) The institution offers a course entirely through distance education as defined in 34 CFR 600.2.~~

(ii) An institution is required to take attendance in a course offered through distance education, as defined in 34 CFR 600.2, unless—

(A) The course is part of the dissertation or capstone phase of a terminal degree program;

(B) The course is part of a direct assessment program that has been determined to be eligible for title IV, HEA program purposes pursuant to 34 CFR 668.10(a) and (b); or

(C) The course is part of a non-term or subscription-based program for which the disbursement of title IV, HEA program funds is based on completion.

Rationale:

During negotiations, the Department clarified that it does *not* intend to require an entire institution to take attendance if it offers some programs or courses through distance education. This proposal addresses that issue by separating instances when an “institution is required to take attendance” from instances when a “course is required to take attendance.”

This proposal also includes three exceptions for (1) courses in the dissertation or capstone phase of a terminal degree program; (2) courses that are part of a direct assessment program that has been determined to be eligible for Title IV, HEA program funds; and (3) courses that are part of a non-term or subscription-based program for which the disbursement of Title IV, HEA program funds are based on completion rather than seat time. These exceptions align with the Department’s stated intent to (1) increase the accuracy of R2T4 calculations, (2) promote good stewardship of Federal dollars, and (3) assist students during hardships.

Proposed Dissertation/Capstone Exception

Students pursuing terminal degrees—such as doctoral students—typically spend a significant amount of time outside of the courseroom conducting research, writing, editing, and revising. This is particularly true during the dissertation or capstone phase of these degree programs. Taking attendance for this population of students would unfairly and inaccurately fail to account for the significant time and effort these students devote to their coursework outside of the courseroom, and it would not be a reliable measure for the purpose of R2T4 calculations. Moreover, because these circumstances similarly apply to doctoral students at physical campuses, failing to exempt this population from the Department’s proposal would result in the unequal treatment of doctoral students in distance learning programs as compared to their similarly situated on-campus peers.

Proposed Direct Assessment Exception

Students in direct assessment programs similarly devote a significant amount of time to building knowledge, skills, and abilities outside of a courseroom. Such programs rely on a student’s demonstration of competency rather than measurements of time, thus providing benefits that include flexibility, accelerated learning and completion, and assurances to employers that a program’s graduates are well-prepared for workplace demands. As the [Department’s guidance](#) explains, “[s]tudent progress in a direct assessment program is measured solely by assessing whether the student can demonstrate that he or she has a command of a specific subject, content area, or skill, or can demonstrate a specific quality associated with the subject matter of the program.”

Indeed, the Department formally recognized these principles when it issued Final Rules on Distance Education and Innovation in September 2020, which addressed the unique nature of direct assessment and subscription-based programs. In doing so, the Department observed that “[s]tudents, especially non-traditional students that find the existing competency-based or distance education programs to be appealing for various reasons, can benefit from flexible pacing and different models for assessing progress.” To help facilitate this flexibility, direct assessment programs rely on learning and engagement with materials outside of the courseroom in addition to the robust learning experiences they provide within the courseroom.

Measuring a student's progress in a direct assessment program based on attendance would be inconsistent with these principles and would negatively affect students in several ways.

- **First**, requiring an R2T4 calculation that is artificially based on dates of attendance, in a program structure that is not designed around seat time, would disincentivize progression and punish students who complete program requirements more quickly than anticipated.
- **Second**, requiring attendance in direct assessment programs would not increase the accuracy of R2T4 calculations because the amount of funds earned by these students is not correlated to time and an attendance-based calculation does not accurately reflect the actual amount of coursework completion for students who take advantage of self-paced instruction.
- **Third**, to offset these negative effects, institutions may feel compelled to add pedagogically unnecessary content or participation requirements to courses in order to increase the frequency of attendance-taking opportunities. Doing so would undermine the advantages of self-paced direct assessment programs and could unnecessarily increase program length and cost.

Institutions must, of course, provide regular and substantive interaction. However, when defining those requirements in 2020, the Department acknowledged that it sought to offer "sufficient flexibility regarding the number and frequency of scheduled interactions based upon the length and intensity of the student's coursework."¹ As the Department observed in the preamble to the 2020 Final Rule:

[A]n institution cannot be expected to ensure perfect attendance by students at each opportunity for interaction with an instructor, which is why the Department, the subcommittee, and the negotiating committee agreed to frame the requirement as an "opportunity" for interaction rather than a required interaction. This approach has the added benefit of allowing institutions to demonstrate compliance with the requirements at the program design level without documenting each and every interaction between students and instructors.²

Thus, the Department modified the definition of "distance education" to clarify that "the requirements for regular interaction are met if the institution provides opportunities for interaction, even if each student does not take advantage of each opportunity."³ In doing so, the Department identified numerous benefits to doing so, such as reducing costs and reducing the need for institutions to require less substantive work for the purpose of documenting that regular and substantive interaction occurred.

Importantly, direct assessment programs undergo a rigorous review and approval process by the Department that thoroughly addresses, among other things, issues related to distance education requirements. This approval process includes descriptions of how the direct assessment program is structured, how learning is assessed, how the institution assists students in gaining the necessary knowledge, and the methodology the institution uses to determine the equivalent number of credit or clock hours. Such programs also must be consistent with the requirements of the institution's

¹ 85 Fed. Reg. 54,759.

² 85 Fed. Reg. 54,757.

³ 85 Fed. Reg. 54,789.

accreditation agency or State approval agency. Moreover, many direct assessment programs use subscription-based financing models that, as addressed below, follow a completion-based approach to the disbursement of Title IV, HEA program funds that is not tied to calendar days or seat time.

Proposed Non-Term/Subscription-Based Exception

In non-term and subscription-based programs, the disbursement of Title IV, HEA program funds is based on completion rather than calendar days or seat time. When the Department issued Final Rules on Distance Education and Innovation in September 2020, it included a definition subscription-based programs that “includes safeguards for both students and taxpayers . . . by requiring students to complete courses or competencies before receiving subsequent disbursements of title IV, HEA program funds.”⁴ As the Department observed at that time, “[w]e believe that evaluating a students pace is unnecessary if the program requires a particular rate of completion in order for the student to continue receiving title IV, HEA program assistance over time.”⁵ In its regulatory impact analysis, the Department observed that these regulatory updates would, among other things, “allow students to progress by demonstrating competencies rather than seat time.”⁶

Requiring attendance for courses in non-term and subscription-based programs would be inconsistent with these principles and would negatively affect students. As noted above, students would be penalized for completing program requirements more quickly than anticipated, attendance data would not accurately reflect a student’s coursework completion, and institutions would be incentivized to add unnecessary participation requirements. An example illustrates these concerns:

- Consider two students in a self-paced subscription-based program that takes attendance. Based on attendance records, Student A stopped attending in the **third** week of the quarter and Student B stopped attending in the **tenth** week of the quarter. But Student A completed more of their program by working faster and devoting more time to their coursework in the first part of the quarter, whereas Student B worked at a slower pace and completed less of their program despite their attendance through week ten. An R2T4 calculation for these students based on attendance would inaccurately and unfairly indicate that Student A “earned” less aid than Student B.

For these reasons, the Department’s stated goals—including both fairness and accuracy—are best accomplished if the requirement to take attendance in courses offered through distance education exclude (1) courses in the dissertation or capstone phase of a terminal degree program; (2) courses that are part of a direct assessment program that has been determined to be eligible for Title IV, HEA program funds; and (3) courses that are part of a non-term or subscription-based program for which the disbursement of Title IV, HEA program funds are based on completion rather than seat time.

⁴ 85 Fed. Reg. 54,769.

⁵ 85 Fed. Reg. 54,770.

⁶ 85 Fed. Reg. 54,783.