



May 4, 2020

Scott Filter
U.S. Department of Education
400 Maryland Ave. SW
Mail Stop 294-42
Washington, DC 20202

Docket ID ED-2018-OPE-0076

To whom it may concern:

Thank you for the opportunity to comment on the Distance Education and Innovation proposed rules, and for the Department of Education's efforts to accommodate the Title IV regulations to better fit innovative educational delivery models.

We appreciate the Department's proposal to limit the requirement for approval for new direct assessment programs to only those new programs that are being offered at a higher credential level than an already-approved program. The requirement for all programs to be approved was appropriate when direct assessment programs were first permitted to receive Title IV aid, because the approval process allowed ED to develop consistent rules in evaluating how schools participate in the learning process and establish credit or clock hour equivalencies, among other factors. But these areas fall more appropriately under the purview of accreditors, not ED. Continuing to require ED approval for all new direct assessment programs offered at the same or at a lower credential level than an already-approved program will tax ED's resources as more direct assessment programs are offered, and will lead to delays in approving requests, creating a barrier to entry for institutions. As direct assessment programs mature, it is logical to consider precisely where problems could arise in the absence of ED approval, and limit required approval to only those circumstances.

The new definition of subscription-based programs allows for new disbursement rules specific to these unique programs, instead of forcing them into existing disbursement rules that don't allow students who rely on Title IV aid to take full advantage of self-paced instruction. We believe the changes in this area will better accommodate the needs of students enrolled in subscription-based learning and we support these changes.

The changes regarding which students are considered withdrawn for purposes of the Return of Title IV (R2T4) funds calculation are a welcome attempt to resolve the technical problems in the current rules for students enrolled in self-paced instruction and in modules, whose treatment with

respect to R2T4 sometimes does not reflect their actual level of coursework completion.

However, after the conclusion of the rulemaking sessions, we identified a potential issue that some students will still be treated inequitably with the proposed changes. For instance, in 668.22(a)(2)(ii)(A)(2), the proposed language in (i) and (ii) allows students who have completed modules comprising at least 50% of the calendar days in a payment period to not be treated as withdrawn. However, it is likely that not all modules will include the same number of calendar days. When students enroll in only two modules and the first module is the shorter one, students who complete only the first module could be treated as withdrawn, simply because their first module included a scheduled break or didn't include a weekend. For instance, a student could enroll in two modules in a payment period lasting 102 days, with the first module ending on a Friday and comprising 50 days, while the second module comprises the remaining 52 days. A student who withdrew after completing the first module would be considered withdrawn. The most equitable solution to address both scheduled breaks and weekends is likely one that counts only days of instruction (excluding both breaks and weekends) instead of calendar days, but this is also the most burdensome. Alternatively, ED could, at minimum, exclude scheduled breaks of less than 5 days between modules from the number of calendar days to address the issue of weekends between modules. We encourage ED to consider solutions to address these unintended consequences that balance equity against burden.

Separately, but also with respect to Return to Title IV Funds, in 668.22(a)(2)(i)(D), we believe the phrase, "unless the student is on an approved leave of absence, as defined in paragraph (d) of this section" should be added here, since the current language in (C) includes this phrase in reference to nonterm programs (which are moved to (D) in the proposed language).

As a final point with respect to Return to Title IV funds, we wish to point out a discrepancy between guidance issued after the conclusion of negotiated rulemaking and ED's justification for the proposed changes in 668.22(a)(3)(ii) to include programs offered in standard terms to also require students to confirm that they will enroll in another module within 45 days of ceasing enrollment to avoid being treated as withdrawn. ED states in the proposed rule that:

"The Department also proposes to make standard term programs subject to the limitations on the timeframe for a student to return following a written confirmation of future attendance. Though it is less common for a module in a standard term program to begin more than 45 days following the end of a prior module, the Department maintains the same concerns about long periods of non-attendance for standard term programs as it does for nonstandard-term and non-term programs, and believes that students should be treated consistently in these situations."

We agree that, prior to ED's revised policy for standard term length issued on November 5, 2019, that it was uncommon for a module in a standard term program to begin more than 45 days following the end of a prior module. However, the new guidance that allows a standard term to be as long as 21 weeks likely makes it more common that more than 45 days could elapse. We

ask that ED consider the proposed changes in light of the November 5, 2019 guidance to ensure that the justification is still reasonable.

We appreciate the clarification in the Satisfactory Academic Progress (SAP) proposed changes that states that the quantitative pace calculation does not apply to subscription-based programs because of their unique nature which already requires students to pass 100% of attempted coursework in order to receive subsequent disbursements, thereby making the quantitative component of the SAP calculation duplicative. The addition of the calendar time alternative to the pace calculation for other types of programs is also a welcomed additional flexibility for institutions of higher education.

However, we suggest changing the proposed language in 668.34(b)(1), to include the bolded text added here: “(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours, or expressed in calendar time **based on the student’s enrollment status...**” We believe this change adds clarity because, while enrollment status is irrelevant when calculating maximum timeframe of 150% of published program length expressed in credit hours, maximum timeframe based on calendar time is dependent upon the student’s enrollment status.

We appreciate the opportunity to comment on these proposed rules. If you have any questions regarding these comments, please contact me or Jill Desjean at desjeanj@nasfaa.org.

Regards,

A handwritten signature in black ink, appearing to read 'Justin Draeger', written in a cursive style.

Justin Draeger, President & CEO