DEPARTMENT OF EDUCATION

34 CFR Parts 600, 643, 644, 645, 647, and 668

[Docket ED–2024–OPE–0050]

RIN 1840–AD85 and 1840–AD92

Program Integrity and Institutional Quality: Distance Education and Return of Title IV, HEA Funds

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), to promote program integrity and institutional quality. These regulations clarify, update, and consolidate certain provisions that apply to distance education and the return of title IV, HEA funds. They also make technical changes to the TRIO program regulations to reflect the current status of the Republic of Palau as a member of the Freely Associated States. This document provides notice that the Department fully closes out the Program Integrity and Institutional Quality: Distance Education and Return of Title IV, HEA Funds notice of proposed rulemaking. That is, we will not be finalizing the remainder of the Federal TRIO program provisions but may promulgate through future rulemaking efforts.

DATES: The regulations are effective July 1, 2026. For the implementation dates of the regulatory provisions, see the Implementation Date of These Regulations in **SUPPLEMENTARY INFORMATION**.

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If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

A brief summary of these final regulations are available at *www.regulations.gov/docket/ED-2024-OPE-0050.*

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I. Abbreviations

CFR: Code of Federal Regulations
CIP Code: Classification of Instructional Programs Code
DEOA: Department of Education Organization Act
EOC: Educational Opportunity Centers
FFEL: Federal Family Education Loan program
FSA: Federal Student Aid
Freely Associated States: the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands
HEA: Higher Education Act of 1965, as amended
McNair: Ronald E. McNair Postbaccalaureate Achievement Program
PEP: Eligible prison education program
PRWORA: Personal Responsibility and Work Opportunity Reconciliation Act
R2T4: Return of title IV funds
RIA: Regulatory Impact Analysis
SSS: Student Support Services Program
Title IV, HEA Programs: Student financial assistance programs authorized under title IV of the HEA
TRIO: Federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds
TS: Talent Search
UB: Upward Bound

II. Executive Summary

1. Purpose of This Regulatory Action

These final regulations address two substantive areas: distance education and return of title IV funds (R2T4). Additionally, this document makes technical changes to the TRIO program regulations to reflect the current status of the Republic of Palau as a member of the Freely Associated States and removes references to the Trust Territory of the Pacific Islands. As noted above, we will not be finalizing the remainder Federal TRIO provisions but may consider them in a future rulemaking efforts.

The Department is addressing these areas to help ensure students are well served by the eligible institutions they attend and ensure that Federal Student Aid (FSA) programs work in the best interests of students. As the two distinct topics are structured and addressed independently in this final rule, the Department generally intends the rule's provisions to be severable from each other. If any provision of a particular subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any other person, act, or practice will not be affected thereby.

The distance education final regulations help the Department improve its oversight of distance education and correspondence programs. To accomplish this, the distance education regulations improve the information available about students in such programs who receive title IV, HEA funds by adding a definition of *distance education course,* and requiring institutions to report their students' distance education status.

The R2T4 final regulations increase the accuracy and simplicity of performing R2T4 calculations; address unique circumstances for what constitutes a withdrawal; and codify longstanding policies into regulation.

The July 24, 2024, Notice of Proposed Rulemaking (NPRM), 89 FR 60256, for the Federal TRIO programs proposed to expand student eligibility under certain TRIO programs for students who have enrolled in or who seek to enroll in a high school in the United States, territories, or Freely Associated States. After reviewing comments received on the proposed rulemaking for TRIO, the Department has decided not to finalize the Federal TRIO provisions other than the technical change mentioned above, to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students. The Department may consider the remaining Federal TRIO provisions in a future rulemaking effort.

2. Authority for This Regulatory Action

The legal basis for these final regulations is title IV of the Higher Education Act of 1965, as amended (HEA), which authorizes the Federal government's major student financial aid programs that are the primary source of direct Federal support to students pursuing postsecondary education. 20 U.S.C. 1070–1099d (sections 400–499 of the HEA). Institutions participating in the title IV, HEA programs must satisfy certain threshold and ongoing requirements, *see id.,* and the Secretary

is given broad authority to carry out program requirements. 20 U.S.C. 1070(b) (section 400(b) of the HEA). As part of its oversight responsibilities under title IV, the Department seeks to promote program integrity and institutional quality. *See generally* 20 U.S.C. 1099c, 1099c–1, 1099c–2 (sections 498, 498A, and 498B of the HEA). To this end, the Department's Student Assistance General Provisions regulations establish threshold requirements for institutions to participate and to continue participation in student financial assistance programs. *See generally* 34 CFR parts 600–603, 642–647, 668, 673–676, 682–694. These final regulations update, consolidate, and revise requirements in two distinct title IV areas: distance education and the return of title IV, HEA funds, impacting 34 CFR parts 600 and 668. The Department's specific legal authority in these areas is set forth below.

Distance Education. Section 103(7) of the HEA defines ''distance education,'' and section 484(l) sets forth rules relating to courses offered through distance education.

Return of Title IV, HEA Funds. Section 484B of the HEA outlines the process that an institution must follow if a title IV, HEA aid recipient withdraws from the institution during a payment period or period of enrollment (also known as R2T4). The Department's various changes to the R2T4 regulations benefit both institutions and students.

III. Summary of the Major Provisions of This Regulatory Action

These final regulations make the following changes.

Distance Education (§§ 600.2, 668.3, 668.41)

- Amend § 600.2 to add a definition for *distance education course.*
- Add § 668.41(h) to require institutions to report student enrollment in distance education or correspondence courses using a procedure that would be determined by the Department.

Return of Title IV Funds (§§ 668.21, 668.22)

- Amend § 668.22(a)(2)(ii)(A)(*6*) to exempt institutions from performing an R2T4 calculation if: (1) a student is treated as never having begun attendance; (2) the institution returns all title IV, HEA assistance disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any payment period or period of enrollment balance owed by the student to the institution due to the institution's returning of title IV, HEA funds to the Department.
- Amend § 668.22(b)(2) to codify longstanding guidance (since the 2005–06 award year [1]) that an institution that is required to take attendance must document the date of the institution's determination that the student withdrew no later than 14 days after the student's last date of attendance as determined by the institution from its attendance records.
- Amend § 668.22(d)(1)(vii) to allow a confined or incarcerated individual, in a term-based setting, to return at a different point in their eligible prison education program (PEP) than the point at which the student left off.
- Amend § 668.22(f)(1)(ii)(A) to streamline and make consistent institutions' calculation of the percentage of the payment period completed for a clock-hour program.
- Amend § 668.22(l)(9) to consider a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module.

IV. Summary of Costs and Benefits

As further detailed in the *Regulatory Impact Analysis,* the Department estimates net present value costs of $27,349,749 over ten years at a 2 percent discount rate. This is equivalent to an annualized cost of $3,044,753 over ten years. Additionally, we estimate annualized quantified costs of $9,423,657 related to paperwork burden.

As also further detailed in the RIA, these final regulations will have benefits, including, ensuring students are well served by the institutions of higher education they attend and that Federal Student Aid programs work in the best interests of students. New regulations for distance education will help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by requiring students' distance education enrollment status. The R2T4 final regulations will increase the accuracy and simplicity of performing R2TV calculations, add additional clarity to institutions on reporting, and codify longstanding policies.

V. Implementation Date of These Regulations

These regulations are effective on July 1, 2026. Section 482(c)(1) [2] of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. HEA section 482(c)(2) [3] also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and outline the conditions for early implementation.

The Secretary is exercising his authority under HEA section 482(c) to designate certain regulatory changes to part 668 in this document for early implementation beginning February 3, 2025. The Secretary has designated the following provisions for early implementation: allow an incarcerated student enrolled in a term-based program who takes a leave of absence to return without resuming coursework at the same point, and exempting institutions from performing an R2T4 calculation under the withdrawal exemption in § 668.22(a)(2)(ii)(A)(6).

VI. The NPRM and Public Comments

On July 24, 2024, the Secretary published a NPRM for these regulations in the **Federal Register**. These final regulations contain changes from the NPRM, which we explain in the *Analysis of Comments and Changes* section of this document. The NPRM included proposed regulations on three topics: distance education, R2T4, and the Federal TRIO programs.

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The Department negotiated in good faith with all parties with the goal of reaching consensus. The Committee reached consensus on TRIO but did not reach consensus on the provisions under Distance Education and R2T4. However, after reviewing the comments received on the NPRM, the Department has determined not to finalize the Federal TRIO provisions other than the technical change mentioned above, to reconsider how best to ensure that the TRIO programs are able to reach all

[1] 2005–06 FSA Handbook—(page 5–32)—chrome—*https://fsapartners.ed.gov/sites/default/files/2021-03/2005-2006%20Volume%205%20Master%20File.pdf.*

[2] 20 U.S.C. 1089(c)(1).

[3] 20 U.S.C. 1089(c)(2).

populations of disadvantaged students. The Department may consider the remainder of the Federal TRIO provisions in future rulemaking efforts.

In response to our invitation in the NPRM, 454 parties submitted comments. We discuss substantive issues under the sections of the regulations to which they pertain.

VII. Analysis of Public Comment and Changes

In this section, we have grouped issues according to subject, with appropriate sections of the regulations referenced. We discuss other substantive issues under the sections of the regulations to which they pertain. In instances where individual submissions appeared to be duplicates or near duplicates of comments prepared as part of a write-in campaign, the Department posted one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. We considered these comments along with all other comments received. In instances where individual submissions were bundled together (submitted as a single document or packaged together), the Department posted all the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. Generally, we do not address minor, non-substantive changes (such as renumbering paragraphs, adding a word, or typographical errors). Additionally, we generally do not address changes recommended by commenters that the statute does not authorize the Secretary to make or comments pertaining to operational processes.

1. Process for Out-of-Scope Comments

We do not address comments that are out of scope. For purposes of this NFR, out-of-scope comments are those that are beyond the scope of the NPRM altogether. Generally, comments that are outside of the scope of the NPRM are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations. Analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

2. Public Comment Period

Comments: Several commenters argued that the 30-day comment period denied the public their right to provide adequate comment. These commenters recommend extending the comment period for an additional 30 days for what they said would be a more comprehensive and thoughtful review of the proposed rulemaking. A few commenters mentioned that institutions have several tasks to balance, including challenges related to the FAFSA simplification rollout, the beginning of the semester, new regulations, and increased reporting requirements. One commenter noted that while they understand that a final rule must be published by November 1 for the rule to take effect the following academic year, they are frustrated that 30 days has become a routine timeframe at the Department because it is generally insufficient time to prepare a response reflective of the regulation's impact. One commenter stated that there was no reason for the Department to give this rule a shorter comment period compared to other NPRMs and that doing so goes against the Administrative Procedure Act. One commenter asserts that Executive Orders (E.O.) 12866 and 13563 support their claims of a 30-day comment period being too short. The commenter states that E.O. 13563 instructs every agency to provide the public with a meaningful opportunity to comment on a proposed regulation and the comment period should generally be at least 60 days. The commenter points out that E.O. 12866 includes similar language.

Discussion: The public comment period is consistent with the Department's obligations under the Administrative Procedure Act and the Executive Orders cited by the commenters, and, given the extensive opportunity for comment provided over the course of the negotiated rulemaking process, the Department declines the suggestion to extend the public comment period for another 30 days. Contrary to the commenter's assertion, the comment period for this NPRM is not shorter compared to other recent NPRMs, and the Department believes 30 days gave the public sufficient time to prepare a response to the proposed regulations. Over 450 individuals and entities commented on the NPRM, and many provided detailed and lengthy comments. Those comments have helped the Department identify areas for improvements and clarification that have resulted in improved final regulations.

Additionally, the negotiated rulemaking process, which began in the Spring of 2023, provided significantly more opportunity for public engagement and feedback than standard notice-and-comment rulemaking, which does not include multiple negotiation sessions. For example:

- The Department began the rulemaking process by inviting public input over 3 days of public hearings from April 11–13, 2023; all who requested to speak were accommodated during the hearings on April 11 and 12, which led the Department to cancel the hearing scheduled for April 13. We received 60 public comments as part of the public hearing process.
- Following the public hearings, the Department sought non-Federal negotiators for the negotiated rulemaking committee who represented constituencies that would be affected by our rules. As part of these non-Federal negotiators' work on the rulemaking committee, the Department asked that they reach out to their broader constituencies for feedback during the negotiation process.
- During each of the three negotiated rulemaking sessions, we provided opportunities for the public to comment, including after seeing draft regulatory text, which was available prior to the first, second, and third sessions. The Department and the non-Federal negotiators considered those comments to inform further discussion at the negotiating sessions, and we used the information to create our proposed rules.

Furthermore, while the Executive Orders cited by the commenter recommend an appropriate time for public comment, they do not require more than 30 days, nor do they take into account the significant additional public input garnered through the mandated negotiated rulemaking process under the HEA.

Changes: None.

3. Distance Education (§§ 600.2, 668.3, 668.41)

General Support

Comments: There were several commenters who supported the Department's proposed rules on distance education. They cited the increasing role of distance education in higher education and the associated need for better measurement of the effectiveness of that instruction by looking at student outcomes. They agreed that the new definitions and reporting requirements will make such oversight easier through the collection of needed data.

Discussion: The Department appreciates the feedback from commenters.

Changes: None.

General Opposition

Comments: Many commenters expressed concern that the new regulations would impose an administrative burden on institutions.

Some felt that the proposed rules evinced a bias against distance education as being of inferior quality to traditional in-person education.

Discussion: In general, we believe that the administrative burden will be less than some commenters raised, both due to clarifying some areas of confusion as well as the decision to not finalize some proposals that were in the NPRM. The benefit from the remaining burden is acceptable because it will help the Department in its administration of the title IV, HEA programs. We provide greater detail on the provisions that are not being finalized in the relevant sections that discuss comments related to those provisions.

Changes: None.

Comments: A few commenters suggested the proposed regulations will stifle innovation in distance education that has occurred in the wake of the pandemic. The commenters stated that, in their view, the distance education practices established during that national emergency are not what prevails now; rather, according to the commenters, distance education has only improved and is constantly becoming more rigorous, and therefore the Department should be more restrained in writing new rules.

Discussion: While the Department agrees that distance education has continued to expand since the pandemic, we disagree that the final regulations will hamper its development. Additionally, rather than limiting innovation and improvement in the distance education sector, the Department's efforts to improve data-gathering related to distance education will eventually result in improved research on outcomes for students enrolled in distance education programs and provide new data for institutions to use to improve their programs. To the extent this comment was referring to proposals related to the treatment of asynchronous clock hours, we note that proposal will not be finalized but may be addressed through future rulemaking efforts.

Changes: None.

Comments: Some commenters noted that the timeline for implementation is too short and that institutions will need more time to be able to incorporate the changes. A couple requested that the Department set aside the current rulemaking and instead continue with negotiations on distance education topics with more qualified negotiators who have sufficient background to adequately advise on and advocate for distance education.

Discussion: The Department acknowledges commenters' concerns that additional time will be needed for institutions to adapt their systems and procedures to implement these new regulations. Since these rules are being published after November 1, 2024, the effective date will not be until July 1, 2026, with the provision on distance education reporting extended to July 1, 2027. This provides the institutions a full additional year to make any adjustments that are necessary for implementation than if the rules had been finalized prior to November 1, 2024. Given the approximately 18 months afforded to institutions to implement these provisions, the Department does not believe further adjustments to the implementation date are necessary.

We do not agree with the commenters who suggested that the negotiated rulemaking committee lacked appropriate expertise, and we decline the suggestion to restart rulemaking with a differently constituted committee. The primary negotiator from the for-profit sector has extensive experience in online education and also participated on the committee for the Distance Education and Innovation regulations published in 2020. The primary negotiator for school business officers is from an institution that has robust and well-regarded distance education coursework and has been offering online bachelor's degree programs since 2003–2004.[4] The alternate negotiator for private nonprofit institutions, who was active during negotiations, is from a distance learning school that was among the first to offer online courses in the 2000's.[5] The primary negotiator for financial aid administrators is from a college that offers 26 associate degrees and 34 certificates 100 percent online in a variety of disciplines.[6] This is only a partial list of negotiators with experience with distance education. Contrary to the commentor's suggestion, there was clearly sufficient experience on the panel for negotiators to put forth informed opinions and suggestions regarding the Department's distance education proposals.

Changes: None.

Comments: Commenters contended that various parts of the distance education provisions violate the Supreme Court's ruling in *Loper Bright Enterprises* v. *Raimondo,* 144 S. Ct. 2244 (2024), which they claim affirms that agencies are not at liberty to expound via regulation where the law is already clear.

Discussion: As a general matter, the Department notes that the *Loper Bright* decision does not preclude an agency from regulating where statutory language is clear. Rather, the decision requires an agency's regulation to be consistent with the plain language and best reading of an authorizing statute. See, *e.g., Loper Bright,* 144 S. Ct. at 2266, 2271. As addressed in the specific sections below, the revised regulations satisfy that standard.

Establishment of Virtual Locations

Comments: Several commenters agreed with the Department's proposed definition of virtual location in § 600.2 because it will allow for better tracking and oversight of distance education as well as loan discharges when a virtual location closes. The commenters indicated that such oversight would permit comparison of student outcomes in programs using different modalities within institutions as well as programs across institutions. One commenter also noted that it may increase the demand for online education because, the commenter stated, schools could formally expand and market their virtual campuses and possibly reduce the operating costs of maintaining physical locations.

Discussion: The Department appreciates the commenters' support.

Changes: None.

Comments: Commenters raised a number of concerns about the new virtual location definition, including about its scope, the additional administrative costs of coordination across programs, the impact of the residency requirement on low-residency programs, and the potential burden on accreditors to ''visit'' such programs. Others requested delayed implementation of this provision or delay until other independent accreditation regulations go into effect. Still others asserted that the Department did not have the authority to treat a virtual location as a completely separate entity for purposes of loan discharge.

Some commenters stated that the data the Department seeks can be effectively collected through existing reporting systems such as the National Student Loan Data System (NSLDS) and the Common Origination and Disbursement (COD) system or the Integrated Postsecondary Education Data System (IPEDS). The commenters assert that it is redundant and impractical to redefine a modality as a location.

Discussion: As noted in the NPRM, the Department proposed the addition of a virtual location because we have

[4] *https://www.usnews.com/education/online-education/marist-college-2765/bachelors.*

[5] *https://www.excelsior.edu/about/.*

[6] *https://www.sanjac.edu/programs/online.*

been hampered in the ability to fully understand students' participation in distance education, account for differences in outcomes and conduct oversight, accurately measure taxpayer expenditures on distance education programs, and gauge the success of such education (89 FR 60256). The Department had initially proposed the creation of a virtual additional location because we believed that would accomplish our goals at a lower burden to institutions. Under this proposal, institutions would report only programs that were fully distance-based at a single virtual location.

During negotiated rulemaking, the Department agreed to collect distance education enrollment information for students receiving title IV, HEA assistance through NSLDS. Non-Federal negotiators believed that such information would permit a more granular understanding of outcomes for students enrolled in distance education or correspondence courses.

In considering both the virtual location proposal and the proposal for NSLDS reporting, we have determined that it is not necessary to include both proposals. Given the greater support from institutions for the NSLDS reporting, as well as concerns about potential implications for site visits and other issues identified above, we have decided to not move forward with the proposal for a virtual location. We will instead collect the relevant information through NSLDS. The NSLDS data collection does not have any effect on closed school loan discharges.

Changes: We have removed the definition of a virtual additional location from § 600.2.

Asynchronous Instruction and Clock Hours (Definition of ''Clock Hour'' in § 600.2)

Comments: There were several commenters who supported the Department's proposal to prevent completion of asynchronous distance education coursework from counting as clock hours in clock-hour programs, by modifying the definition of ''clock hour'' in § 600.2, even though this change will remove some options from affected schools and students. They agreed with the Department's rationale for making this change. One commenter pointed to how, during the open comment periods of the negotiated rulemaking sessions, multiple students testified about using their financial aid to pay for expensive clock-hour programs that consisted solely of YouTube videos that were free to the public, with little to no interaction with instructors, and that none of these students received any hands-on training, typically required by clock-hour programs, and none of them learned the skills necessary to succeed in the professions for which they trained.

Discussion: The Department appreciates the support from commenters. As discussed in the NPRM (89 FR 60259), the Department has heard similar concerns from students through complaints and in program reviews.

Changes: None.

Comments: Several commenters suggested that the Department's proposal exceeds its authority, asserting that it completely removes a form of education delivery provided in the HEA and ignores the Department of Education Organization Act (DEOA). Commenters asserted that the HEA does not give the Department the authority to treat asynchronous clock- and credit-hour programs differently, and that the HEA definition of distance education in section 103(7) specifically allows for this mode of instruction when it states that distance technologies are ''to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.'' One commenter observed that there is no statutory distinction between clock- and credit-hour programs in distance education, that section 481(b)(3) of the HEA (20 U.S.C. 1088) only requires an ''eligible program'' to have the capability to effectively deliver distance education, and that section 481(b)(4) of the HEA acknowledges that an ''eligible program'' can include credit hours or clock hours. One commenter asserted that the Department's citation of section 400(b) of the HEA for the broad authority to regulate in this area is unwarranted, especially in the wake of the Supreme Court's recent *Loper Bright* decision, which removed the *Chevron* deference that previously was accorded to Federal agencies (section 400(b) of the HEA states that the Department will ''carry out programs to achieve the purposes of this part.'') The commenter noted that section 400(b) of the HEA is about title IV grant and benefit programs, not asynchronous instruction, and asserted that the Department is trying to assume authority it no longer has.

Commenters also asserted that the Department did not sufficiently explain why it reversed the stance it took in the 2020 final rule, which the commenters believed was the product of rulemaking consensus, and that the proposed regulation was thus in violation of the Administrative Procedure Act. One commenter asserted that the 2024 proposed regulation moves backward what the commenter believed was a consensus position in 2020. Another commenter pointed out that the Department agreed with the testimonials of commenters in 2020 about the efficacy of asynchronous delivery and confirmed in the final rule that it was acceptable. The commenter also asserted that most schools did not start using asynchronous delivery until 2022, so it is too soon to determine that it is ineffective.

Discussion: The *Loper Bright* decision does not prohibit an agency from regulating; rather, it requires the rules to be consistent with the plain language and best reading of the authorizing statute.

Congress authorized the Department to promulgate regulations governing applicable programs and gave the Department broad authority to carry out the purposes of the various title IV programs. *See* 20 U.S.C. 1070(b)(HEA section 400(b)); 1082(a)(1)(HEA section 432(a)); 1087a(b)(HEA section 451(b)).[7] Contrary to the commenters' claim, these general provisions provide the Department the ability to ensure that any general provisions, such as those related to distance education, are promulgated fulfill the purpose of the grant and loan programs, which is to meet the needs of the student beneficiaries.

In defining an eligible title IV program, Congress recognized that clock hours and credit hours are two separate and distinct forms of instruction. *See* 20 U.S.C. 1088(b). While the HEA does not define a clock hour, the regulatory definition of a clock hour was first adopted in November 1974 (39 FR 39412). That definition stated that a clock hour was measured based upon spending 50 to 60 minutes in direct instruction or in a faculty-supervised learning opportunity such as a laboratory, shop, or internship. Until 2020, that definition went largely unchanged except for the inclusion of a definition for correspondence courses.

The longstanding interpretation of a clock hour also followed the plain meaning of the term—it is an hour as measured by the 60 minutes displayed for one rotation of the minute hand on a clock. In contrast, the concept of a credit hour is based on a combination of both learning with an instructor and learning outside of the classroom, as

[7] In outlining its legal authority for the rules set forth in the NPRM, the Department inadvertently omitted the general authority provision at 20 USCS 1221e–3, and the general loan provisions at 20 USCS 1082(a)(1), 1087a(b). The Department is rectifying those omissions here.

described in the definition of a credit hour in § 600.2.[8] Nothing in these regulations affects an institution's ability to offer asynchronous instruction as part of a credit-hour program.

The decades-long definition of a clock hour never included the concept of out-of-class work. It also does not turn on whether a program is offered virtually. This definition predated the creation of the internet, and it remained in place for nearly 15 years after fully online programs were allowed in the title IV HEA programs. Congress also did not change this interpretation in the last full reauthorization of the Higher Education Act in 2008.

The distinct nature of clock-hour programs and the Department's longstanding interpretation of the term must be considered when interpreting the statutory language providing that distance education can be provided synchronously or asynchronously. The concepts of credit hours and clock hours had been well-established for many years when Congress amended the law to create the definition of ''distance education'' providing for both synchronous and asynchronous online education.[10] There is no reason to believe that Congress intended to overturn the traditional concept of a clock hour as an hour of supervised instruction because of the addition of the word ''asynchronous'' in that new definition. At that time, the vast majority of programs using distance education were offered through credit hours, especially given the hands-on nature of clock hour programs. The revised regulation preserves the unique nature of clock-hour programs and ensures the requirement for 50–60 minutes of supervised instruction is met. Moreover, there is no statutory prohibition against treating the two differently for specified purposes.

In an effort to clarify the definition of a clock hour and allow for greater innovation in clock-hour programs, the Department included changes to the definition in negotiated rulemaking in 2019. During negotiated rulemaking, the Distance Learning and Educational Innovation subcommittee raised concerns about allowing clock hours to count toward title IV, HEA eligibility if they did not involve direct synchronous instruction. The subcommittee specifically noted that asynchronous clock hours would be more akin to homework, which cannot be counted toward title IV, HEA eligibility in brick-and-mortar clock-hour programs, which would create an unfair inconsistency between programs using different modalities. Commenters are thus mistaken that the provision in the final 2020 rule was the product of consensus. In fact, in 2020, the change to asynchronous learning for clock-hour programs was not part of that consensus language. Rather, consensus was reached on a version of the rule in which asynchronous clock hours were not permitted for title IV, HEA purposes, the same principle the Department proposed in 2024, and that consensus version was in the 2020 NPRM. The final 2020 rule departed from such consensus in response to public comments, largely from cosmetology schools. The adoption of this changed position was not motivated by an underlying change in the statute. Nor did the final rule include any analysis or research of the specific innovations that merited the upending of more than four decades of agency precedent.

In the preamble to those regulations (85 FR 54752), we specifically noted our continued concern that clock hours offered asynchronously could be used as a means to complete unsupervised homework. The Department was attempting to allow for alternative educational approaches while attempting to maintain the longstanding position that, aside from correspondence courses, clock hours may only be counted for coursework that occurs in the classroom or through clinical or hands-on activities, whereas time spent outside of the classroom with supporting materials, including reading or passive consumption of videos, cannot be counted toward a student's title IV, HEA eligibility. See, *e.g.,* paragraphs (1)(i) and (ii) of the definition of a clock hour in § 600.2, both of which predate the distance education definition established in 2020.[9] Specifically, in the 2020 final rule we stated that: ''The Department remains concerned about the possibility that clock hours offered asynchronously could be used as a means to complete unsupervised homework assignments rather than coursework that otherwise would have occurred in the classroom, which is prohibited under the Department's longstanding policy for clock-hour programs'' (85 FR 54742).

However, in light of the range of public comments, the Department revisited this provision in the 2024 NPRM and ultimately has decided to not finalize it. We will continue to conduct oversight on how institutions offer any asynchronous clock hour programs and may revisit this issue at a later date through a future rulemaking effort if we find continued evidence of widespread problems.

Because we are not finalizing this proposal, the Department maintains the position taken in 2020 that any distance education clock hour program delivered in whole or in part through asynchronous methods must involve regular and substantive interaction with an instructor, as defined in the definition of ''distance education'' in 34 CFR 600.2. Ensuring regular and substantive interaction includes continuous and active monitoring of student academic engagement. Additionally, these programs cannot count toward a student's title IV, HEA eligibility time that is more comparable to homework, such as reading or watching videos, and they must ensure that active engagement occurs during hours that are included in a student's eligibility. Institutions wishing to offer asynchronous clock hour programs must ensure they have the technological solutions in place necessary to make these kinds of assessments. Failure to do so could result in institutions owing liabilities to the Department or facing other administrative actions. If the Department continues to encounter non-compliance with these requirements, we may propose additional protective or restrictive measures on clock hours offered asynchronously, or once again propose a full ban as proposed in the NPRM.

With respect to the assertion that the Department ignored the DEOA, the commenter did not indicate how or why they felt the DEOA was ignored, and therefore the Department is unable to respond to that comment.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: Multiple commenters asserted that the Department did not provide sufficient evidence that asynchronous instruction is a problem. According to the commenters, it was not sufficient for the Department to rely on its stated experience in program reviews as well as student complaints when it has not made such documents public. One commenter went on to state that unspecified and unexplained reasoning does not satisfy the Supreme Court's standard for an examination of the relevant data and a reliance upon

[8] In these regulations a credit hour is defined as one that reasonably approximates one hour of ''classroom or direct faculty instruction'' and two hours of ''out-of-class student work'' per week, or an equivalent amount of work for other academic activities.

[9] *https://www.ecfr.gov/current/title-34/part-600/section-600.2#p-600.2(Clock%20hour).*

factual findings and thus renders the regulation arbitrary and capricious. Commenters also felt it was overbroad to prohibit all asynchronous instruction in clock-hour courses and that it was inaccurate to imply that all synchronous and in-person classes are of higher quality.

Several commenters suggested there is research (in some instances providing citations) that demonstrates asynchronous learning is effective and therefore should be permitted to count as clock hours.

Discussion: As discussed above, the Department has decided to not finalize the proposed change to prohibit asynchronous clock hour programs.

In considering the decision to not finalize this provision the Department reviewed the studies cited by the commenters. We did not find any of them persuasive in the decision to not finalize this provision. We found that the studies cited have little to no bearing on asynchronous clock-hour programs offered by American institutions of higher education because they focus on international contexts, credit-hour programs, non-career and technical programs, graduate programs, comparisons to in-person as opposed to synchronous virtual instruction, or outcomes that are not tied to learning and course performance. We acknowledge that the literature on the specific question of the value of asynchronous clock hours is undeveloped, but that does not justify comparisons to unrelated contexts. We explain the limitations of specific studies cited by commenters below.

One study cited by commenters is a meta-analysis of 225 studies published in 2014.[10] This study looked at other studies that examined the benefits of active learning versus lecture settings. However, it focused on undergraduate instruction in science, technology, engineering, and mathematics. Those are all historically credit-hour areas of learning, and there is no attempt in the study or by the commenters to connect these findings to clock-hour programs. Moreover, neither the commenters nor the study considers how clock-hour programs are already designed to be more hands-on than a traditional lecture-based format. We also note this piece was published prior to the 2020 rule that allowed for the offering of asynchronous learning in clock-hour programs and was never cited or considered as part of the decision to make that change, suggesting that its findings are not relevant to the specific issue at hand here: whether asynchronous learning is appropriate in clock-hour programs.

Similar limitations exist for another study cited by commenters.[11] This study only considers 27 undergraduate and graduate students at a university, which has little bearing on clock-hour programs since they are not offered by this type of institution of higher education. The study also focuses on student satisfaction outcomes instead of the more relevant outcomes of student performance and learning.

Commenters also cited a study published in an Iranian medical journal in 2018.[12] It looks at students participating in a practical pathology program for one semester in 2016. It compared traditional lecture instruction to distance learning. A single semester's results from a foreign country's medical education is not informative on the question of whether clock hour programs in a U.S. setting can be offered asynchronously. Training medical doctors already entails expectations for significant out-of-class work and addresses a group of students very different from those generally pursuing clock hours.

Issues of comparability appeared in many of the other studies cited. For example, commenters pointed to a 2020 study looking at graduate medical education in the wake of the COVID–19 pandemic.[13] Again, the level of education considered is significantly different from asynchronous clock-hour programs and already presumes significant work conducted by students outside of the classroom. It considers curricular design options for asynchronous learning as well as virtual learning. The study also notes ''We do not recommend transitioning your entire curriculum to an asynchronous platform.'' [14] The study did not consider any sort of trial to explore potential learning outcomes.

Many other studies cited ran into the same issue of focusing on instruction in foreign countries that does not appear to be based in clock hours. Commenters cited a 2021 meta-analysis of 36 studies published in an Indonesian journal that focused on the teaching of English as a foreign language.[15] It considers the relative merits of synchronous versus asynchronous learning for this specific subject matter. These are all distinct from what is offered through clock hours for title IV, HEA funds. While the conclusions are not relevant for the considerations of this final regulation, the study did find that, for asynchronous learning, ''[t]he weaknesses involve lack of interaction, low mastery of content, dull class, connection issues, and network issues.'' [16]

A 2024 study cited by commenters considering virtual learning for training dentists in China faced similar issues.[17] It asked 157 fourth-year students and 54 teachers their opinions on online learning using a questionnaire. The study found that the ''skill operation score'' of the students taught with some virtual learning was lower than that of those taught traditionally, though the difference was not statistically significant. As with other studies cited, the study looked at levels of education distinct from what the vast majority of asynchronous clock hour programs offer in the United States.

In some cases, the studies cited considered just a single meeting of a course. For instance, commenters cited a 2024 Taiwanese study that looked at 170 fourth-year students attending a single dermatology lecture.[18] This is again an instance where students are already expected to conduct significant work out-of-class in a program that in the United States would be offered in credit hours. A study cited by commenters of 20 residents or orthopedic surgeons in Mexico taking an asynchronous course to diagnose ankle fractures has the same challenge—it is dealing with one lesson given to graduate level students who already have significant training in the given area.[19] While a 2019 study cited by commenters did focus on second-year students, it related to 66 second-year students in an Indian university who were quizzed on what the authors describe as ''low backache.'' [20] They looked at pre- and post-test scores on a multiple-choice quiz. While the Department does not think this study bears on this final regulation, we do note the authors stated: ''Furthermore, since the undergraduates are introduced to new topics each day and have huge

[10] *https://pubmed.ncbi.nlm.nih.gov/24821756/.*

[11] A Pilot Study Exploring Interaction and Student Satisfaction in Asynchronous Courses in Higher Education | TechTrends.

[12] *https://www.semanticscholar.org/reader/e12a9dfea127f0d7c287453a848ce2378ed28fdc.*

[13] *https://pmc.ncbi.nlm.nih.gov/articles/PMC8043318/pdf/ats-scholar.2020-0046PS.pdf.*

[14] See id.

[15] *https://www.researchgate.net/publication/356349861_BLENDED_ONLINE_LEARNING_COMBINING_THE_STRENGTHS_OF_SYNCHRONOUS_AND_ASYNCHRONOUS_ONLINE_LEARNING_IN_EFL_CONTEXT.*

[16] See id.

[17] *https://link.springer.com/article/10.1186/s12909-024-05171-1.*

[18] *https://pmc.ncbi.nlm.nih.gov/articles/PMC10960437/.*

[19] *https://www.medigraphic.com/pdfs/ortope/or-2023/or232c.pdf.*

[20] *https://pmc.ncbi.nlm.nih.gov/articles/PMC6477961/.*

syllabi, they may get lost if live interactions are replaced with asynchronous teaching. There may be a gradual decline in motivation due to lack of active peer and student–teacher interactions.''

None of these studies looks at issues comparable to clock-hour programs in the United States that are eligible for title IV, HEA funds. Extending findings from one lecture, quiz, or portion of a course for a few dozen people in another country does not provide persuasive evidence to guide the potential awarding of millions if not billions of dollars in title IV, HEA funds.

Other studies did not involve formal postsecondary environments at all. Commenters cited a 2022 Argentinian study looking at the content of just under 300 posts on Facebook discussing diabetes self-care (the researchers excluded posts ''based only on emoticons/GIFs, such as clapping hands or smiley faces expressing joy.'')[21] This kind of analysis may be useful in the public health context, but it has little relevance to what criteria formal postsecondary programs should meet to be supported by taxpayer dollars. Similarly, a 2019 Nigerian study focused on the use of asynchronous learning to teach word processing skills to 70 secondary school students.[22] Again, those types of skills can be valuable, but they are not relevant to title IV, HEA programs.

The studies cited that appeared in U.S. journals or publications generally were older, focused on a limited number of people, were only theoretical, or had some combination of those issues. For instance, commenters cited a 2008 piece in a quarterly publication from a U.S. nonprofit focused on the use of technology in higher education.[23] It focused on two online seminars of eight and 19 students, respectively. There are no other specifics provided around the level of postsecondary program, but the courses were taught by the author who in 2008 was focused on computer and systems sciences at a university in Sweden. Again, the comparison is not specific to clock-hour programs, and focusing on different types of credit-hour experiences fails to consider the differences between that type of coursework and clock-hour programs.

A 2004 piece, meanwhile, looked at perceptions of the role of the instructor in online learning.[24] This study predates the ability of institutions to offer fully online courses that are eligible for title IV, HEA funds. This study looked at courses to help teachers or administrators with preparing for online learning, with almost two-thirds of participants holding a master's degree. The age of the study, the fact that it was focused on professional development for students already with advanced degrees, and the lack of a connection to clock-hour programs all make it irrelevant for this final regulation. On a similarly theoretical basis is a 2009 study raised by commenters that looked at instructional design strategies.[25] It also was not used or cited by the Department in the 2020 policy change despite being available at that time, which suggests its limited relevance to the specific issue in both the 2020 and 2024 regulations: the appropriateness of asynchronous learning in clock-hour programs. Though more recent, a 2020 article cited by commenters considered how to handle emergency transitions to online learning due to the pandemic, without any evaluative component.[26] Those considerations are not relevant for the lasting policy change discussed in this final regulation.

The studies presented by commenters thus did not factor into our decision to not finalize the provision. Our reasons for not finalizing the provision are discussed elsewhere in this preamble.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: Commenters did not feel that the two studies cited by the Department in support of the prohibition on asynchronous clock-hour learning were valid and relevant. One commenter noted that both studies occurred when remote learning was imposed during COVID, which the commenter characterized as an atypical remote learning experience. The commenter noted that one study was an analysis of another organization's student satisfaction survey, which, according to the commenter, addressed student responses to programs that took place during the time of remote learning due to COVID without a clear explanation of the educational experience. The commenter stated that it is not surprising that students forced into emergency remote learning during COVID would lament the lack of hands-on training, and that this experience does not reflect the planned online programs that keep tasks that require hands-on experience intact while using asynchronous learning only for didactic instruction. The commenter found the second study unreliable because it also occurred during COVID-era instruction. While the commenter acknowledged that this study focused on outcomes and not just student satisfaction, the commenter pointed out that it was of one class at one institution with only 33 students and that, according to the commenter, the asynchronous instructional methodology described in the study does not appear to be typical but rather something that may have been adapted for emergency remote COVID-era instruction, which does not represent the student experience in planned online instruction.

Discussion: As discussed above, the Department has decided to not finalize the proposal to prevent title IV aid at asynchronous clock-hour programs. We note the cited studies questioned by commenters were not the primary basis for the proposal in the NPRM nor the choice to not finalize this provision. That said, we do agree that the study that focused on delivering lectures both asynchronously and synchronously has many of the same issues with the reports cited by commenters—they focus on graduate-level education in a foreign setting and are thus not comparable to clock-hour offerings.[27]

We note that the findings from student satisfaction surveys in the other study questioned by commenters highlight student concerns that they need hands-on training to succeed in certain environments and often do not receive it. While this survey also does not directly consider clock-hour programs in synchronous or asynchronous learning environments, it looks at a U.S. setting and considers types of workforce training that are more similar to U.S. clock-hour programs. We will continue to monitor the research in this area as we weigh options going forward.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an

[21] *https://formative.jmir.org/2022/11/e38862.*

[22] *https://www.sajournalofeducation.co.za/index.php/saje/article/view/1383/868.*

[23] *http://elearning.fit.hcmup.edu.vn/~longld/References%20for%20TeachingMethod&EduTechnology%20-%20Tai%20lieu%20PPDH%20&%20Cong%20Nghe%20Day%20Hoc/(Book)%20-%20Sach%20tham%20khao%20-%20eLearning/e-Learning%20Concepts/Asynchronous%20&%20Synchronous%20e-Learning%20(Hrastinski-2008).pdf.*

[24] *https://www.ncolr.org/jiol/issues/pdf/3.1.5.pdf.*

[25] *https://www.tandfonline.com/doi/epdf/10.1080/08923649409526853?needAccess=true.*

[26] *https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning.*

[27] *https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_.223.aspx#.*

institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: Commenters were concerned that removing asynchronous clock hours could remove flexibility for students who might have difficulty accessing synchronous instruction, such as those that must work or care for others, who are in rural areas, and students who cannot attend school synchronously, including veterans and those currently in the military. Others were concerned that disallowing asynchronous clock-hour learning would impact programs addressing shortage areas, such as nursing, EMT, or public safety.

Others asserted that some asynchronous learning works as well or better than synchronous learning. One association asserted that its member schools report higher levels of completion, licensure, and placement rates in programs using asynchronous distance learning. Commenters assured that schools are successfully using tracking technology, which can be very robust in its capabilities to monitor students, provide them with learning opportunities, and keep them on track. One commenter asserted that the Department acknowledged in 2020 that adequate technology existed, and it has only improved since then, and wondered what had changed to cause the Department to change its mind. One association commenter noted that investments by its members in the technology for asynchronous education are reported to be as much as $450,000 to $500,000 per institution and that these investments will be lost if the rule goes into effect as proposed. The association also asserted that institutional investments cannot simply be converted to synchronous learning. Others felt that the Department should have provided statistics on non-compliance as part of a comprehensive assessment of asynchronous learning. Commenters asserted that, instead of harming these institutions that have adequately provided asynchronous instruction combined with hands-on training as a part of clock-hour programs, the Department should focus on providing clearer guidance and standards for non-compliant schools and allow them time to come into compliance.

Some commenters suggested that, rather than completely removing asynchronous instruction from clock-hour programs, the Department should limit asynchronous education to a certain percentage (several suggested 50 percent) or number of hours of a program (one suggested a percentage of the programs offered) or to didactic components of programs. Some commenters noted that many programs offering asynchronous instruction already limit the amount of the program that is offered asynchronously or have pared it back since the end of the COVID pandemic and have gone back to programs that consist primarily of in-person instruction with a smaller asynchronous component. One commenter posited that only about half of states have authorized asynchronous delivery and that in those States it has been limited to didactic portions and no more than 50 percent of all clock hours. That commenter suggested that the Department could require schools to demonstrate that the asynchronous methods are comparable to synchronous methods on ''student engagement, objectives, effectiveness, and educational outcomes.''

Some commenters noted that institutions are already required by the regulations to ensure regular and substantive interaction between students and faculty and that this is a sufficient check on substandard instruction. Some asserted that accreditors and State regulators are tasked with the job of assuring that programs provide adequate education, and those oversight bodies have accounted for asynchronous learning with adequate measures, such as by limiting the percentage of program hours of such learning that can occur. A few suggested that there be a specialized accreditation or that some existing oversight mechanism be used, such as the Peer Online Course Review, that would ensure the quality of asynchronous programs.

One commenter observed that in many States, career and technical education (CTE) accredited programs offered in clock hours provide the same content as nearby credit-hour programs but will be negatively affected solely because of their institutional structure. As a solution, one commenter suggested not eliminating such asynchronous education in clock-hour programs but treating it as correspondence coursework, which offers limited access to title IV, HEA funds.

Multiple commenters asked that the Department delay the implementation of the modification to the definition of ''clock hour'' in § 600.2, if it proceeds with the regulation change, with one asking for a delay until at least 2027. Commenters also sought clarity about the impact of the regulations on students who are already enrolled in affected programs.

A couple commenters noticed that, by specifying in the definition of a ''week of instructional time'' in proposed § 668.3(b)(2) that asynchronous coursework occurs in credit-hour programs, we have, perhaps inadvertently, prevented direct assessment programs from using asynchronous coursework.

One community college system commenter anticipated that the colleges in its system will review their clock-hour programs with the intention of converting them to credit hours, which will be burdensome.

Discussion: As discussed above, the Department is not finalizing the provision to prevent asynchronous clock-hour programs from being eligible for title IV, HEA funds. Because this provision is not being finalized, the concerns from the commenters are no longer relevant.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: One community college commenter suggested the Department should permit clock-hour programs to be offered through distance education during periods of emergency situations, such as natural disasters.

Discussion: The Department does permit colleges to offer clock-hour programs via distance education during a federally declared emergency, such as a hurricane, fire, or pandemic, and still receive Federal student aid funding, but certain conditions must be met. For example, the Department provided guidance allowing institutions to transition clock-hour programs to distance education during the COVID–19 emergency under specific temporary waivers.

Changes: None.

Definition of Distance Education Course

Comments: Several commenters supported the definition of a *distance education course* as consisting entirely of distance instruction notwithstanding in-person non-instructional requirements because they stated it would clarify the scope of such courses, assess their effectiveness, and ensure consistency across institutions. The commenters also stated that it would, as noted in the NPRM (89 FR 60262), assist institutions considering when they need to seek additional accreditor approval for passing the 50 percent threshold for the number of distance education courses or number of students enrolled in distance education.

Discussion: The Department appreciates the commenters' support for

provisions we believe will help with consistency and oversight of such coursework.

Changes: None.

Comments: There were concerns from several commenters that the addition of a definition of *distance education course* and other reporting requirements would create a student unit record system, which is explicitly proscribed in the HEA.

Discussion: The commenter appears to be referring to section 134 of the HEA, which prohibits, with certain exceptions, the development of a database containing personally identifiable information on individuals receiving title IV Federal financial assistance. Section 134(b)(1) of the HEA specifically provides an exception for, among others, the title IV programs, so section 134 is inapplicable to these regulations.

Changes: None.

Comments: A few commenters observed that the proposed definition of *distance education course* includes residency experiences, which can vary greatly in length, or could allow for some in-person instruction. One commenter asked how long a residency experience could be while still meeting the new definition; for example, whether an offering would qualify as a distance education course if there were a single lecture or two and the balance of the class consists of online work. The commenter also asked whether there was a threshold for a hybrid class to be considered a distance education course. The commenter pointed out that the difference between the IPEDS definition of distance education course and the one in these regulations is the residency experience, and inquired as to how the Department would reconcile the two definitions. Another commenter asked that the Department add clarity pertaining to clinical rotations, which often occur away from the school's campus. The commenter stated, for example, that students complete some of their requirements virtually for the didactic components of the course but receive in-person instruction from preceptors during the hands-on part of their rotation; the commenter asserted that such rotations should not count as distance education courses. One commenter suggested that the definition of *distance education course* be further separated, such as by distinguishing between synchronous and asynchronous instruction.

Discussion: We have removed the phrase ''residency experiences'' from the definition of a *distance education course,* in part due to the concerns expressed by commenters regarding the inconsistency of this definition with the IPEDS definition and the complexity created by an undefined period for in-person coursework that could be included in a particular class. This resolves most of the concerns presented by the commenters.

Regarding clinical rotations, if the hands-on portions count as essential parts of a course, such a course would not fall under the definition, but if no required part of a course is in-person, the course would fall under the definition of distance education. For example, if a student in a medical rotation takes one class that involved the actual praxis part of the rotation as well as one virtual class in biology that has no in-person component, the student is enrolled in one class that is not a distance education course (praxis) and one that is (biology). Also, hybrid courses in which any portion is in-person instruction, no matter how small, would not be distance education courses. Finally, there is no plan to distinguish between types of distance education courses because we believe that the categorization as proposed is sufficient.

Changes: The phrase ''residency experiences'' has been removed from the definition of *distance education course.*

Comments: Some commenters stated that the proposed addition of *distance education course* inaccurately characterizes residency experiences as non-instructional, but not only are residency experiences instructional and allow students to apply knowledge from their coursework, they are sometimes required to satisfy accreditation and state licensure standards. The commenter noted that during negotiations the Department supported moving the phrase ''residency experiences'' before ''non-instructional'' in the definition, but it did not do so in the NPRM.

Discussion: We agree with the commenter. However, as described above, we have eliminated the phrase ''residency experiences'' from the definition of *distance education course.*

Changes: The phrase ''residency experiences'' has been removed from the definition of *distance education course.*

Comments: Several commenters were concerned that the Department's proposed definition of a *distance education course* might not align with other definitions used by institutions and that the Department's changes may prompt unwarranted regulatory scrutiny of distance education programs. They suggested that any amended definitions or new reporting requirements should consistently promote strong student outcomes across all modalities of learning.

Discussion: The Department considers the new definitions to be straightforward and disagrees that they will cause undue and unspecified regulatory misalignment or scrutiny of distance education programs. To the contrary, the changes will instead facilitate what the commenters are seeking: stronger student outcomes across all modalities of learning by providing necessary information pertaining to those modalities.

Changes: None.

Comments: One commenter felt that the Department's definition of *distance education course* conflicted with section 484(l)(1)(A) of the HEA. Specifically, the commenter asserted that there was a conflict between the HEA, which considers distance education to include courses offered ''principally'' through distance education, and the Department's proposed definition, which restricts the definition to courses offered ''exclusively'' through distance education.

Discussion: The commenter appears to have misunderstood the meaning of section 484(l)(1)(A) of the HEA. The two cited provisions serve different functions and are not in conflict. Unlike the regulation at issue here in § 600.2, the statutory text does not, and is not intended to, define distance education. Instead, it is designed to determine who is enrolled in correspondence courses, stating that a student in a ''course of instruction'' leading to a degree or certificate that occurs principally via distance education must not be considered enrolled in correspondence courses.

Changes: None.

Reporting Enrollment in Distance Education or Correspondence Courses (§ 668.41)

Comments: There were several commenters who supported the Department's intention to gather the enrollment status of students, whether they are fully in-person, fully online, or in a hybrid situation. They agreed with the Department that this will be useful data for better understanding the effectiveness of the instruction modalities and appreciated the extended time (which will be delayed further, until July 1, 2027) for implementation of this reporting.

Discussion: The Department thanks those commenters for their support.

Changes: None.

Comments: Numerous commenters thought that the collection of student

enrollment status would add too much burden on schools. In addition, the commenters indicated that some schools already collect data pertaining to how instruction is carried out, so the new requirement would be redundant for them. Commenters asserted that because students so often engage in different modalities, including within a term, collection of such data will be difficult and will lack utility. They queried how a student who is enrolled in 100% distance education courses in one semester and 100% in-person the following semester would be reported, and they asserted that, since the Department already collects distance education information via IPEDS, it should use that for its proposed purposes rather than add unnecessary requirements. Some predicted that while the Department is ostensibly only asking for limited enrollment information about students, this could lead to broader, more burdensome requests for data. Some expected that the proposal would entail the Department creating an ad hoc portal or a costly system for reporting the information, which would require more personnel by schools, and would be a problem for the Department and schools to implement. One group of schools estimated that the data reporting would cost approximately $2 million for some of its colleges and requested that the requirement be delayed until 2027. One commenter suggested that the topic be discussed in further negotiations with negotiators who have the necessary experience.

Discussion: While individual institutions might collect such data, the new reporting will allow the Department to gather such data from all schools participating in the title IV, HEA programs. At least one commenter who supported the proposed change felt that institutions that do not already track and evaluate this data by modality will benefit from collecting and analyzing this data, which will help inform institutional decision-making about program offerings, allocation of resources, and selection of outside partners to develop and operate online programs. And as noted in the NPRM (89 FR 60263), although this will increase burden for institutions by requiring them to report an additional layer of enrollment information, we do not anticipate that this additional datum about a student's enrollment status will cause undue burden or require that institutions have to implement new systems of reporting because the Department is incorporating the change into its existing enrollment reporting process in NSLDS. As to the choices students make with regard to modality, the reporting will capture that, whether they are enrolled in classes that offer mixed modality or those that are purely distance or in-person education, without the complication commenters envision. A student who is enrolled in 100% distance education courses in one semester and 100% in-person courses the following semester would be reported as distance education the first semester and in-person in the second. A student who is enrolled in even one class that allows for distance education, attending remotely as the student chooses throughout the semester for example, would be in a hybrid status. The IPEDS information collection does not provide student-level data and is therefore not sufficient for the Department's intended purposes. Also, the Department proposed only the stated request for student enrollment in distance education and correspondence courses, as requested by negotiators and institutions during negotiations. Any additional mandates for data would need to be negotiated in future rulemaking sessions and would be subject to public comment. Finally, we expect to incorporate the reporting of this information into an existing data stream; no additional portal or interface between schools and the Department will be needed, and the cost for such reporting will not be in the millions of dollars. In the interest of allowing institutions ample time for implementation, we have decided to delay this reporting requirement until 2027.

Changes: Institutions will not be required to report this information until July 1, 2027.

Comments: Some commenters suggested it would be unfair to compare distance education data with in-person instruction data because such a comparison would fail to account for differences in the student populations attending different modalities. The commenters felt that outcomes will be different for the distance education student population, which, they state, generally has less time and flexibility to devote to school.

Discussion: It is unclear from the comments whether the commenters are opposed to the collection of data or are concerned about the use of the data after collection. To the extent that the commenters are opposing the collection of the data because there may be differences in the demographics, life circumstances, and outcomes of students enrolled in distance education versus those enrolled in in-person instruction, the Department disagrees that those potential differences should prevent the Department from collecting this important data. As set forth in the NPRM (89 FR 60263), the reporting provision was added at the request of negotiators and was intended to provide the Department and institutions, students, and the public expanded information necessary to make informed decisions when developing policies regarding distance education and to provide students additional information for enrollment choices. The concerns raised by the commenters regarding the differences in demographics of distance education students does not negate the need for the collection of the data.

With respect to the use after collection, the Department would not evaluate information about distance education in a vacuum. The Department maintains other data about recipients of title IV, HEA funds—such as their age, family size, marital status, employment status, and high school completion status, as well as whether students have dependents they are supporting. These factors would also be taken into account when developing policies around distance education. Although the Department cannot speak to how institutions will use the distance education data, it can note that during negotiations institutional representatives voiced a desire for the information in order to better develop distance education courses that meet student needs. It is the Department's belief that all parties—the Department, Congress, researchers, institutions, students, and the general public—can benefit when they have program outcome data by modality when making decisions.

Changes: None.

Comments: Several commenters pointed out that there is often no sharp distinction between distance and in-person education, that students often enroll in both at the same time, that such enrollment will be difficult to track, and that trying to make distinctions in such a blended environment will, in their view, lead to inaccurate assessments of students and programs. The commenters asserted that flexible instructional modality is beneficial to students because it allows them to enroll in coursework in the way that is most advantageous to them and singling out 100% distance education for tracking could create unintended consequences due to a false binary approach and be misleading at a time when the interaction between distance and in-person instruction is becoming more varied.

Discussion: Regarding commenters' concerns that the proposed data

requirements may be difficult to implement, given that some students enroll in courses offered in several different modalities, the Department notes that the level of detail required by § 668.41(h) of the final regulations was added in response to specific requests from non-Federal negotiators. The Department altered its proposed regulations during negotiated rulemaking to require institutions to report students' enrollment in distance, in-person, or hybrid education, in addition to requiring the reporting of virtual locations. The Department ultimately agreed with non-Federal negotiators that the benefits of collecting such additional data outweighed the costs and burdens for institutions.

The Department disagrees with the commenters who suggested that the data on distance education and correspondence course enrollment is misleading or creates a ''false binary'' approach. In fact, the Department accounts for the fact that students will be enrolled in various education modalities: in-person, distance, and hybrid. The changes will allow us to gather information on each modality and distinguish between them. The new information will not prohibit schools from combining and using the modalities as they currently do.

The Department also asserts that programs offered entirely or nearly entirely using distance education or correspondence courses have several unique characteristics that distinguish them from other programs, including the ability to enroll students from a significantly larger geographic area and a necessarily greater reliance on technology as the medium for instruction and coursework. These characteristics merit analyzing fully online programs separate from other types of programs.

Changes: None.

Comments: Some commenters remarked that combining distance education with correspondence coursework would not allow for accurate assessments given that these are distinct and separately regulated modalities. The commenters felt that data from the two should be separately collected. One suggested the following alternative regulatory language: ''For each recipient of title IV, HEA assistance at the institution, the institution must report to the Secretary, in accordance with procedures established by the Secretary, the recipient's enrollment status as exclusively through distance education, exclusively through in-person instruction, or through a mix of distance education and in-person instruction. The procedures established by the Secretary will distinguish between enrollment in distance education and enrollment in correspondence courses.'' Another commenter opined that the E-App system (which schools use to apply for designation as eligible title IV institutions and for recertification) is not designed for such reporting and should not be used for it.

Discussion: As noted in the NPRM (89 FR 60286), the system details for the reporting requirement we are establishing in § 668.41 will be clarified in future guidance and instructions, but we do anticipate distinguishing between the two modalities of distance education and correspondence courses to allow for a comparison between them. We thus decline as unnecessary the commenter's suggested alternative language. Also, unlike the virtual location requirement described elsewhere, we do not expect the E-App to be involved in this reporting process.

Changes: None.

Comments: A commenter suggested that the details of this reporting under § 668.41 should be at the student level, not at the course level. Currently enrollment reporting is done at the student and program level by campus via NSLDS, and, according to the commenter, continuing with this method would be the most efficient and effective way of reporting. This reporting occurs every 60 days, which schools are already required to follow and, according to the commenter, this should be frequent enough. The commenter noted that adding one field to the existing NSLDS enrollment reporting process would be efficient and not burdensome.

Discussion: While the Department has not yet determined the details of this reporting, we agree that the process described by the commenter appears to be an efficient method of implementing the reporting requirement and anticipate that the Department likely will adopt a process similar to the one described. We also agree that reporting should occur at the student level and will not be collecting data at the course level.

Changes: None.

Comments: One commenter suggested expanding the proposed status reporting categories in § 668.41 from three to four: fully in-person, and at a distance, as proposed, but then splitting hybrid status into majority distance and majority in-person.

Discussion: The Department believes that the three enrollment statuses will allow for easy classification of students and will provide adequate information for the intended purposes, so the Department does not currently plan to expand that number to four.

Changes: None.

Comments: One commenter asked how often the new reporting will occur and what students will be involved.

Discussion: Modality of instruction will be reported for all students on whom the institution would otherwise be required to report enrollment. The Department intends to align the frequency of this reporting (though that has not yet been determined) with other existing reporting requirements, such as occurring every 60 days, which as noted above is already the interval for NSLDS enrollment reporting.

Changes: None.

4. Treatment of Title IV Funds When a Student Never Attends or Attends and Then Withdraws/Return of Title IV Funds (R2T4) (§§ 668.21 and 668.22)

General Support

Comments: Many commenters offered support for the Department's proposed regulations regarding the requirements applicable to the return of title IV, HEA funds (R2T4). Several of these commenters noted the rules received broad support during negotiated rulemaking and the regulations will result in better stewardship of taxpayer funds and the integrity of the title IV, HEA programs. As one commenter noted, the regulations collectively are logical and reasonable measures to ensure accuracy of R2T4 calculations.

Many commenters agreed the regulations will simplify the R2T4 process for institutions and provide positive benefits to their campus community. One commenter noted the R2T4 regulations are so complex for institutions to navigate that the regulations are consistently in the Department's top annual compliance findings. One commenter noted that simplification of R2T4 calculations will encourage students to re-enroll and reduce the burden on financial aid offices when supporting those students' re-engagement. Another commenter states the Department's proposal is an important step in modernizing financial aid policies to reflect the growing prevalence and success of distance education.

Many commenters agreed the proposed changes will benefit students, including incarcerated individuals and student loan borrowers. Several of these commenters noted allowing students to repay Direct Loan funds owed to the Department after withdrawing or not beginning attendance through the terms of their Master Promissory Note better recognizes the financial realities these

students face. Several commenters noted these borrowers often cannot pay the full amount owed immediately and faced penalties such as negative credit reporting and collections. Some of these commenters believe the proposed rules would incentivize institutions to voluntarily institute refund policies that will reduce the institutions' burden in performing R2T4 calculations, while at the same time making it easier for students to re-enroll in the future by reducing unpaid debts owed to either the institution or the Federal government. One commenter noted these changes will support student success regardless of their financial situation or academic challenges.

Some commenters supported changes that ensure fewer opportunities for institutions to retain title IV, HEA funds to which they are not entitled. One commenter noted attendance-taking requirements for the purposes of R2T4 for courses offered entirely through distance education will better support accurate withdrawal dates.

Discussion: We thank the many commenters for their support. We believe these final regulations will reduce burden on institutions and students while also providing reasonable and appropriate safeguards for taxpayer dollars. As explained in greater detail below, we have decided not to move forward with two proposals from the NRPM in this area.

Changes: None.

General Opposition

Comments: One commenter stated that the Department has not taken into account the U.S. Supreme Court's 2024 *Loper Bright* decision, which, according to the commenter, eliminated *Chevron* deference and discontinued judges' ability to defer to Federal agency interpretations of the statutes they enforce.

Discussion: These regulations do not run afoul of *Loper Bright.* The NPRM highlighted our direct statutory authority to make the regulatory changes, in section V—Authority for This Regulatory Action (89 FR 60258), and these regulations reflect the best reading of the plain text of that authority. We also note that, to the extent this comment was focused on concerns about the proposed changes to attendance taking requirements for distance education courses or the treatment of student aid funds if the recipient does not begin attendance at the institution, the Department has decided to not move forward with those proposals at this time. The final regulations thus increase the accuracy and simplicity of performing R2T4 calculations for institutions, address unique circumstances for what constitutes a withdrawal, and codify longstanding policies into regulation.

Changes: None.

Comments: Some commenters stated that the proposed changes to the R2T4 regulations may lead to stringent and inflexible institutional refund policies, which could disproportionately affect low-income and vulnerable students, making it more difficult for them to re-enroll and complete their education.

Discussion: The Department disagrees that the regulations will lead to more stringent and inflexible institutional refund policies that will harm students. In fact, the Department's focus for many of the changes was to provide flexibilities that would benefit students. For example, the Department provided flexibility to institutions to consider a student who stops attending very early in a term as never attending which would require the institution to refund charges and cancel any balances owed. Additionally, the leave of absence allowance for eligible prison education programs (PEPs) will offer greater flexibility to confined or incarcerated individuals when they are impacted by a situation in the correctional facility outside of their control. Lastly, as described elsewhere, the Department has decided to not finalize the requirement for institutions to take attendance in distance education courses, which was the primary source of concern for many commenters.

Changes: None.

Comments: Some commenters argued that the proposed R2T4 rules could force institutions to hire additional staff to manage the increased documentation and compliance workload and that institutional resources will be redirected from student support services to administration and data collection.

Discussion: We do not believe that the R2T4 regulatory changes will require significant institutional staffing changes or a redirection of substantial institutional resources from student services to administrative services. In fact, the regulations are designed to improve and simplify the process in some areas. For example, the changes to the R2T4 calculation for modules will eliminate the need for institutions to consider which types of aid a student received to determine the number of days in the R2T4 calculation. Additionally, the new R2T4 exemption for students who are treated as never having enrolled will reduce the number of R2T4 calculations that are performed at some institutions. Finally, we note that to the extent the comments were addressing potential increased costs to implement the proposal requiring attendance taking in distance education courses, that provision is not being finalized. Institutions will thus not face any costs related to that provision.

Changes: The Department is not finalizing the proposal for attendance taking in distance education courses.

Comments: One commenter recommended that the Department not move forward with any of the changes and instead exempt any postsecondary institution from R2T4 that qualifies for Title III or Title V waivers, or if the institution is designated as a Minority Serving Institution. The commenter believes that their proposal would provide flexibility to utilize resources differently to marginalized populations.

Discussion: The Department lacks the statutory authority to exempt all or a subset of postsecondary institutions that participate in the title IV, HEA programs from the R2T4 requirements.

Changes: None.

Comments: One commenter asked that the Department delay implementation of these regulations until 2026 or 2027 to allow institutions time to work on internal systems, third party vendors, and administrative reporting mechanisms, train instructors, and make other logistical changes.

Discussion: The regulations will not be effective until July 1, 2026. We believe that provides sufficient time to make necessary adjustments.

Changes: None.

Comments: One commenter stated that the proposed changes will disrupt the timely delivery of title IV, HEA funding to all students. The commenter stated that institutions will break up disbursements as students' progress through the term to avoid overpayments, and that multiple disbursements hinder students from using their title IV, HEA credit balances for educationally related expenses such as housing and food, which are benefits that are intended to be available to students under current regulations.

Discussion: We appreciate the commenter's concern for students. However, nothing in this regulation requires an institution to break up a disbursement into smaller payments. That is simply an allowable option if the institution determines it best meets the needs of the students. Further, we do not believe that these regulations create any additional incentive for institutions to adopt that approach, primarily because the amount of effort needed to shift to a multiple disbursement model would significantly outweigh the increase in burden imposed by these regulations. This is especially true because, although shifting to such a

model might reduce the frequency of returns under the R2T4 regulations, it will not obviate the need to amend R2T4 policies and procedures in accordance with these new regulations. The regulations will still apply to all students who cease attendance during a payment period or period of enrollment even if a school makes multiple disbursements during a payment period.

Changes: None.

Comments: One commenter asked for the official definition of attendance for R2T4 purposes.

Discussion: For R2T4 purposes, under § 668.22(l)(7), ''academic attendance'' and ''attendance at an academically related activity'' must include ''academic engagement,'' as defined in § 600.2.

Treatment of Title IV Grant and Loan Funds if the Recipient Does Not Begin Attendance at the Institution (§ 668.21)

Comments: The Department received many comments supporting the proposal in § 668.21(a)(2)(ii) to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms and conditions of their promissory note. Many commenters agreed the proposed changes better recognize the financial realities these students face. Several commenters noted the proposed rules will prevent borrowers from defaulting on their debts, as these borrowers often cannot pay the full amount owed immediately and would face penalties, such as negative credit reporting and collections. Others noted the proposed changes will help students who have likely already spent their credit balances on things like housing, childcare and other necessary expenses and therefore cannot make a lump sum payment. Others agreed the changes would strengthen the borrower's financial health and could have positive economic impacts.

Discussion: We thank the commenters for their support. However, as explained below, we have decided to not move forward with this proposal.

Changes: None.

Comments: A few commenters stated that the rule will allow abuse because a borrower could have their loans forgiven under Public Service Loan Forgiveness (PSLF) or forgiven as a possible result of enrolling in an Income Driven Repayment (IDR) plan after having never participated in any postsecondary coursework. One commenter stated that the Department is creating a ''perverse incentive'' that will encourage individuals to enroll in a program only to receive a credit balance, subsequently withdraw, and then allow them to pay the loan back over the course of many years.

One of the dissenting commenters offered several alternative solutions other than eliminating the proposed regulation: (1) the Department require that postsecondary institutions return all of the title IV, HEA funds for a period of non-attendance, and (2) require a 30-day delay in any subsequent disbursements to the borrower if the borrower seeks to enroll at a different institution.

Another alternative offered by a commenter is for the student to repay, upon demand, all funds except those already spent on necessary education-related expenses, which could be repaid under the terms and conditions of the promissory note or during a shortened yet adequate period of time.

Discussion: In the Department's experience through interactions with institutions and program reviews, individuals seeking to abuse the title IV, HEA programs overwhelmingly target grant programs rather than loan programs. However, we do not want to create the perception of possible loopholes in the Federal aid programs. Accordingly, we will not move forward with this change at this point. The Department will continue to look carefully at the individuals who do not begin attendance to determine whether revisiting this policy in the future may be merited.

Regarding the alternate proposals, we believe adding a requirement that a postsecondary institution return all of the title IV, HEA funds for a period of non-attendance by a student is unreasonably burdensome. We also decline to incorporate a 30-day delay on subsequent disbursements to a student that sought to reenroll. The Department is not making changes to disbursement rules with these final regulations.

Regarding the final alternative offered by the commenters, requiring a student to immediately repay all funds except those already spent on necessary education-related expenses, the HEA requires that a student spend all of their title IV credit balance funds on allowable education related expenses. If this alternative, as suggested by the commenter, were implemented, institutions would be obligated to document the exact amount of funds a student spent, and categorize that spending, to determine compliance with the requirement. The additional burden placed on institutions to determine how the title IV, HEA credit balance funds were spent would be extensive and unreasonable.

Changes: We have removed the proposed changes to § 668.21 to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

Comments: One commenter requested that, in light of the new regulatory language, the Department update the language on the promissory note, which currently requires a student to agree to immediately repay any loan money that is not used for authorized educational expenses. The commenter also asked how to determine that a student ceased to be enrolled half-time if they never began attendance.

That commenter, and others, questioned the validity of providing a grace period for individuals who do not begin attendance, and suggested that the students should be required to request a forbearance. The commenter believes that allowing the borrower to retain funds for six months may do the borrower harm by encouraging the borrower to spend the funds.

One commenter believes that by not attending, the student broke their contract with the Department, and therefore, the Department should not maintain the broken contract through the terms of the promissory note. Another commenter similarly stated that the Department should not allow students to borrow without ever having attended and that this change could reduce resources available to fund other students' educations.

Discussion: As described above, the Department is not moving forward with this proposal. However, we note that under § 668.164(i)(1), the regulations intentionally permit the disbursement of loans up to 10 days prior to the start of classes to allow students to cover necessary education expenses, such as housing and books. The Department's longstanding position is that this policy is necessary so that students are fully prepared for the start of their programs. Permitting these disbursements does not reduce the amount of funding available to fund other students' educations, because the HEA dictates the amount of title IV, HEA loan funds available to students on an individual basis, without a cap on the total amount that can be lent across all students, and the amount of loans received by one student does not affect the amounts a different student can receive.

Changes: We have removed the proposed changes to § 668.21 to allow

a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

Comments: One commenter stated that institutions must already confirm attendance before making loan disbursements.

Discussion: We remind the commenter that under § 668.164(i)(1), in certain situations, a postsecondary institution may be able to make an early disbursement of title IV, HEA aid up to 10 days before the first day of classes of a payment period and there would be no confirmation of attendance at that time. Ultimately, institutions must confirm attendance for students to retain eligibility for some or all of the title IV, HEA funds they received during the payment period, but attendance confirmation does not have to occur prior to this initial disbursement.

Changes: None.

Treatment of Title IV Funds When a Student Withdraws (§ 668.22)

Withdrawal Exemption (§ 668.22(a)(2)(ii)(A)(6))

Comments: Several commenters supported the optional withdrawal exemption under § 668.22(a)(2)(ii)(A)*(6),* stating that it will reduce administrative burden and prevent unnecessary financial penalties on students who withdraw early. Commenters also stated that it will decrease the institutional cost and complexity of compliance with title IV regulations, and it may also encourage institutions to adopt generous refund policies which will help students maintain financial stability.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: One commenter asked how a student granted a withdrawal exemption be reflected in enrollment reporting, particularly regarding medical withdrawals. The commenter noted that often requests for medical withdrawals are granted late in the semester or well after the semester is over, and this likely means the student will already have been reported as being in attendance at least half-time. Where the school grants the medical withdrawal, the commenter sought clarification on how this ''non-withdrawal'' would be reported to NSLDS.

Discussion: The Department will issue guidance regarding the procedure for reporting students, who have been granted the withdrawal exemption in § 668.22(a)(2)(ii)(A)*(6),* to NSLDS as part of enrollment reporting. We will provide guidance on reporting statuses, reporting requirements, and any applicable dates (such as grace period dates) following the publication of these regulations.

Please note that, for institutions that utilize the withdrawal exemption, borrowers will be treated as having never attended and the grace period will begin the day after the last date of attendance in the prior payment period.

Changes: None.

Comments: One commenter stated that many community colleges cannot afford to implement the optional withdrawal exemption. The commenter offered several examples, including that most community colleges do not offer housing and have low tuition; therefore, many students receive larger title IV, HEA credit balances. The commenter stated that a community college would not be able to write off large amounts for multiple students.

Discussion: We reiterate that the withdrawal exemption is optional. This will permit institutions that wish to maintain or create generous tuition refund policies to be exempt from performing an R2T4 calculation in cases where students are made financially whole after withdrawing. Use of these generous tuition refund policies will be at the discretion of the institution. The Department hopes that the reduced burden resulting from this exemption from the R2T4 process encourages institutions to maintain or create these policies for their students.

Changes: None.

Comments: One commenter asked whether the optional withdrawal exemption could be applied on a case-by-case basis or whether institutions that choose to implement the withdrawal exemption must apply it to all students who withdraw. The commenter also expressed concern about the requirement that ''the institution's records treat a student as having never attended courses for that payment period or period of enrollment.'' The commenter stated that their institution wants to retain a record of course attendance to justify title IV, HEA disbursements that were made during the payment period or period of enrollment.

Discussion: Institutions can implement the withdrawal exemption on a case-by-case basis according to the institution's policy. We agree with the commenter that an institution must keep a record of a student's eligibility to receive title IV, HEA funds. Additionally, the institution must document the use of the withdrawal exemption for a particular student. The regulations do not require an institution to eliminate all record of a student's attendance for a payment period in which they qualify for this exemption. Instead, they require the institution to document that the institution's policies treat the student similarly to other students who did not attend, for example with regard to satisfactory academic progress or grading policies.

Changes: None.

Comments: A few commenters recommended that under paragraph § 668.22(a)(2)(ii)(A)*(6)(iv)* the Department change ''current year'' to ''payment period.'' The commenters noted that paragraphs *(i)–(iii)* of the withdrawal exemption are tied to the payment period or period of enrollment, while provision *(iv)* is not.

Discussion: The Department is persuaded by the commenters' argument that the various subsections should contain identical language since that was the intended purpose of the regulatory change.

Changes: We have updated § 668.22(a)(2)(ii)(A)*(6)(iv)* to replace ''any current year balance'' with ''any payment period or period of enrollment balance'' owed by the student to the institution due to the institution's returning of title IV, HEA funds to the Department.

Comments: One commenter requested that the regulation define institutional charges as exclusive of institutional housing and meals based on a direct proration of use for the payment period. The commenter stated that while tuition refund policies are under the institution's purview, additional charges for the use of services such as housing are considered auxiliary and not at the discretion of the central campus to limit or control. Further, it places students who live in institutionally owned housing at a disadvantage as compared to students who may rent from a private third party. Though both are incurring living costs, the latter would be permitted the flexibility, assuming the campus reverses or writes off all other institutional charges, whereas the former would require an R2T4 calculation resulting in an outstanding debt.

Discussion: We decline to take the commenter's suggestion. We acknowledge that students with institutionally provided food and housing may be treated differently from students with non-institutionally provided food and housing. Students without institutionally provided housing and food are more likely to have larger credit balances, which will make this a more challenging

requirement for some institutions, since the provision in *(iv)* requires that the institution not recoup or collect any title IV, HEA funds returned to the Department due to the implementation of this exemption. This exemption is an optional exemption to be used by institutions when they determine it is advantageous to do so. Further, we believe the commenter may have misinterpreted the optional withdrawal exemption. An R2T4 calculation is not required if the exemption is applied, since all title IV, HEA funds are returned in that instance.

We will amend the proposed regulation to clarify that this requirement includes title IV, HEA funds that were provided to the student or parent, that were disbursed for that payment period or period of enrollment.

Changes: We amended § 668.22(a)(2)(ii)(A)*(6)(ii)* to state that ''The institution returns all the title IV grant or loan assistance, including all title IV credit balances provided to the student or parent, that were disbursed for that payment period or period of enrollment.''

Comments: One commenter asked the Department to extend the current withdrawal exemption for graduates/completers to students that are not enrolled in programs offered in modules.

Discussion: Currently a student meets the withdrawal exemption for graduates/completers in § 668.22(a)(2)(ii)(A)(*1*) if they complete all of the academic requirements for their program and are able to graduate before completing all of the days or clock hours in the period they were scheduled to complete. This withdrawal exemption can apply to any type of program, including those with or without modules. Since the exemption that the commenter suggests already applies to non-modular programs, the Department declines the proposed revision as unnecessary.

Changes: None.

Comments: One commenter stated that R2T4 calculations are for students who officially or unofficially fully withdraw. The commenter asserted that, if the student does not begin attendance, their aid must be cancelled for that course.

Discussion: It appears the commenter is not differentiating between students who may be eligible for the exemption described in § 668.22(a)(6) and are treated as if they never enrolled versus students who never begin attendance in any class (§ 668.21). We remind the commenter that § 668.22(a)(6) is an exemption from performing an R2T4 calculation that would otherwise apply. By contrast, § 668.21 addresses the situation where a student never actually begins attendance in any class, which would not require an R2T4 calculation.

Changes: None.

Comments: One commenter asked that the Department confirm that the withdrawal exemption in § 668.22(a)(6) is optional.

Discussion: The withdrawal exemption in § 668.22(a)(6) is optional and applies to all types of programs, including those with or without modules.

Changes: None.

Determination of Withdrawal Status (§ 668.22(b)(2))

Comments: Several commenters expressed general support for the Department's proposals to establish more timely and accurate data to complete R2T4 calculations, but most had reservations regarding certain elements of the proposed requirements. One specific commenter indicated that the proposed regulation aligned with their current process.

Discussion: We thank the commenters for their support and address their specific reservations in the discussions below.

Changes: None.

Comments: Many commenters opposed the provision that requires an institution that is required to take attendance to document the student's withdrawal date within 14 days of a student's last date of attendance. Many commenters suggested longer time frames, with several suggesting a 28-day period as a maximum timeframe in which to officially determine that a student who has not attended for some time is, in fact, a withdrawn student. This opposition included one commenter who believed that the Department's primary motivation for this regulatory requirement was to prevent students from ''cheating the system.'' Other commenters interpreted the proposed provision to mean that a postsecondary institution must administratively withdraw a student after 14 days of nonattendance.

Discussion: We disagree with the commenter who stated that the provision was intended to prevent students from cheating the system. The primary motivation of this regulatory provision is to ensure timelier and more accurate R2T4 calculations. Further, as set forth in longstanding guidance, the Department does not require an institution to administratively withdraw a student on the 14th day, but to establish the date of determination for purposes of the R2T4 calculation. The institution then has an additional 45 days before any calculated return must be made to determine whether the student continues with his/her enrollment. If the student does return within the 45-day timeframe, then no further action is required. This 14-day time frame only applies to institutions required to take attendance under current § 668.22(b)(3).

Changes: None.

Comments: Several commenters opined that the Department is redefining the definition of distance education in § 600.2 by applying a de facto 14-day timeframe to regular and substantive interaction. Some commenters pointed out that the Department agreed in the preamble to the 2020 Distance Education and Innovation Final Rule [28] that a timeframe should not be mandated for regular and substantive interaction.

Discussion: We disagree with the commenters. The regulatory change in § 668.22(b)(2) establishes a regulatory timeframe to document a student's withdrawal status for R2T4 purposes. The timeframe for assessing a student's status, and for determining that the student has withdrawn, does not impose any timeframe for regular and substantive interaction. As noted in the Summary of the Major Provisions of this Regulatory Action, the Department is simply codifying into regulation what has been our guidance for institutions required to take attendance since the 2005–06 award year. The requirement also applies to all students for whom the institution is required to take attendance, which could include on campus students that are not subject to the definition of distance education.

Changes: None.

Comments: Several commenters were concerned that the requirement to determine a student's withdrawal status within a set timeframe could negatively impact students who accelerate within their program by working ahead in one or more individual courses. The commenters were concerned that they might have to administratively withdraw a student who had 14 days of inactivity due to course acceleration. One commenter asked if this regulation eliminated the option for a student to accelerate in their coursework.

Discussion: As noted above, an institution is required to document its determination of a student's withdrawal within 14 days of the student's last date of attendance for purposes of the R2T4 calculation; however, the institution is not required to administratively

[28] Distance Education and Innovation—*https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation.*

withdraw the student on that date and has an additional 45 days before it has to pay any return resulting from the withdrawal. It is unlikely that students who accelerate work will not resume activity within this time frame. Further, this additional time before payment provides ample opportunity for the institution to reach out to the student to ensure they plan to remain enrolled and to ensure the student continues academic engagement.

Where a student is enrolled in multiple courses in a program and has accelerated in one or more courses, the student will not be considered withdrawn as long as the institution has determined that the student is still attending coursework for that payment period or period of enrollment. The requirement to determine a withdrawal date for a student is when that student has completely withdrawn from the institution or otherwise stopped attending all coursework. Nothing in this regulatory provision eliminates an acceleration option for students.

Changes: None.

Comments: A few commenters asked if it is the Department's expectation that institutions will begin documenting all exceptions granted by individual faculty members to students if the exception allows for a temporary cessation of academic activity for a period that exceeds 14 days. In addition, commenters provided examples of extreme flexibility with student coursework without stating whether the programs were term based or nonterm based. In some of the examples, it appeared that nonterm flexibilities were being used in term-based academic calendars.

Discussion: For R2T4 purposes, the treatment of exceptions granted to students by individual faculty members depends on whether the exception is applied to all of the program's coursework in a payment period being pursued by the student or only applied to a portion of the student's coursework in a payment period. If the student has an exceptional situation that requires a complete cessation of all coursework in a payment period, the student will be withdrawn unless the institution grants an approved leave of absence. However, if the exceptional situation extends to only a portion of the student's coursework in a payment period, and the institution assesses that the student is still attending coursework in the payment period or period of enrollment, there is no requirement for the institution to withdraw the student at that time. In addition, nothing in this final regulation infringes on the institution's discretion under existing policies and procedures to provide grades of incomplete to students when the institution determines that it is appropriate. Some of the commenters described existing situations that appeared to be extremely flexible without stating whether the programs being described were term-based or nonterm based. We remind the commenters that the use of a term-based academic calendar, standard or nonstandard, may limit coursework flexibility in ways that a nonterm calendar does not, because an academic term has a defined end date.

Changes: None.

Comments: Many commenters were concerned that an administrative withdrawal after 14 days of inactivity would not serve students enrolled in short nonstandard terms (*e.g.,* 5, 6, or 8 weeks) or modules of a similar length that are part of a standard term. The commenters stated that the 14-day requirement appears to have the historic quarter or semester terms in mind. For periods of time that are less than standard terms, the commenters argued that 14 days is too long, and a shorter, proportional amount of time would be more appropriate.

Discussion: We disagree with the commenters. The commenters' concern appears to be based on the incorrect assumption that, under the regulations, an institution cannot administratively withdraw a student until after 14 days of nonattendance; however, nothing prohibits an institution from identifying a withdrawn student earlier than 14 days after the last date of attendance.

Changes: None.

Comments: Several commenters wondered if the 14-day timeframe in § 668.22(b)(2) includes calendar days, weekdays, holiday/spring breaks, single-day college or university holidays, or snow (or other emergency) days.

Discussion: The 14-day date of determination timeframe, which has been added to § 668.22(b)(2), counts all calendar days regardless if they are weekend days, holidays, or other scheduled breaks. For days that are associated with emergencies or disasters, institutions should refer to the guidance in Dear Colleague Letter GEN 17–08, *Guidance for Helping Title IV Participants Affected by a Major Disaster.*

Changes: None.

Comments: A few commenters asked what documentation is required for an approved leave of absence.

Discussion: The Department does not specify what documentation must be gathered to support an approved leave of absence at the institutional level. For a complete listing of the procedures and necessary information for a leave of absence to be approved for title IV, HEA purposes, please see the requirements in § 668.22(d), which are further explained in the FSA Handbook, Volume 5.[29]

Changes: None.

Comments: One commenter was concerned with how to deal with a student who was withdrawn for failing to engage in academic activity for 14 days and then sought reinstatement at some point following the withdrawal but within the same payment period. The commenter observed that these students often successfully complete the course following the reinstatement. The commenter believed that it is unclear from the proposed regulatory language whether reinstatement practices would be permissible moving forward, noting that it would be detrimental to students if they were prohibited from being reinstated.

Discussion: As we have outlined above, the institution has up to 14 days after the student's last date of attendance to document the student's withdrawal date, not necessarily to administratively withdraw the student, since the institution has time to determine a student's enrollment or withdrawal status. The institution ultimately must ensure that the R2T4 calculation be completed no later than 30 days following the date of determination and any funds be returned to the Department no later than 45 days following the date of determination.

If the institution must ultimately withdraw the student, there is nothing in this final regulation prohibiting the student from being reinstated according to the institution's reinstatement policies and procedures. We remind commenters that guidance regarding student reinstatements and the ability to undo an R2T4 can be found in the FSA Handbook Volume 5.[30]

Changes: None.

Comments: Several commenters were concerned about students who may be in academic activities that, by design, do not include regular interaction between the student and instructor for more than 14 days. Commenters offered an example of instructors evaluating students' field work in the community through authentic assessment. Commenters requested clarification about the institutional requirements under § 668.22(b)(2) in these types of situations.

Discussion: Section 668.22(b)(2) requires an institution to document

[29] FSA Handbook—*https://fsapartners.ed.gov/knowledge-center/fsa-handbook.*

[30] FSA Handbook—*https://fsapartners.ed.gov/knowledge-center/fsa-handbook.*

whether a student should be withdrawn no later than 14 days after the student's last date of attendance. As we have stated, this is not a requirement that a student be withdrawn after 14 days of nonattendance. An institution must still comply with § 668.22(b)(2), even if it has chosen a method of academic engagement that, by design, creates periods where student activity is not being monitored/tracked at least every 14 days. Institutions might reach out to student in a variety of ways including, but not limited to, using text messages, emails, and telephone calls.

Changes: None.

Comment: One commenter believed that the Department did not have the authority to require that institutions determine a student's withdrawal status no later than 14 days after the last date of attendance (LDA) (§ 668.22(b)(2)). The commenter generally cited to the caselaw and factors that courts apply when assessing agency action, including that an agency must demonstrate that it has examined relevant data and articulated a satisfactory explanation for its action, and that an agency action is arbitrary and capricious if the agency fails to consider an important aspect of a problem or offers an explanation that runs counter to the evidence before the agency. The commenter did not specify how it thought the Department failed to satisfy this standard.

Discussion: Congress provided the general framework for title IV returns in 20 U.S.C. 1091b, and the Department is tasked with implementing those provisions. Among those provisions is the requirement that an institution ''return no later than 45 days from the determination of withdrawal'' the amount of unearned title IV funds disbursed to the student. 20 U.S.C. 1091b(b). Congress goes on to provide how that withdrawal date should be determined. 20 U.S.C. 1091b(c). The codification of the Department's longstanding guidance, for institutions that are required to take attendance, that the institution must determine the withdrawal date no later than 14 days after a student's last date of attendance, represents the Department's mechanism for ensuring that institutions meet the 45-day refund deadline set forth in the statute. With respect to the remaining arguments raised in the comment, the Department provided a detailed explanation in the NPRM (89 FR 60264) of the reasons for the provision.

Changes: None.

Attendance Taking in Distance Education Courses (§ 668.22(b)(3)(ii))

Comments: Several commenters agreed with the proposed requirement that an institution take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program. Comments of support include:

- The state of technology and learning management systems in online education allows for attendance to be taken;
- The rule reinforces the importance of providing regular and substantive interactions between students and faculty in online coursework;
- This regulation addresses longstanding inaccuracies in tracking withdrawals;
- The rule is an important backstop for vulnerable students who have been preyed upon by predatory schools;
- It will be more difficult for institutions to not properly perform R2T4 calculations for distance education students who withdraw and help ensure that borrowers have the documents necessary to prove their eligibility where they seek a loan discharge due to the institution not returning Direct Loan funds as required.

Discussion: The Department thanks the commenters for their support. As discussed further below, however, in this final regulation we will not be finalizing the proposal in § 668.22(b)(3)(ii) to require attendance taking in distance education courses.

Changes: None.

Comments: Several commenters opposed this provision. Objections included that the Department lacked legal authority to adopt the provision; the Department failed to provide data to support the change; that the provision would increase costs, take instructors away from teaching, and inhibit academic freedom; and that it would be difficult to implement for students taking asynchronous courses or those enrolled in competency-based programs. Commenters were worried about how the provision would be implemented and requested guidance on various aspects of the provision.

Discussion: The Department is statutorily required to ensure the proper return of title IV HEA funds when a student withdraws before completing a payment period or period of enrollment. Attendance taking is specifically provided for in the statute and is crucial for the Department to carry out its statutory responsibilities. We remain concerned about ensuring that withdrawals are properly tracked in a fully online environment, where we have observed that institutions have greater tools available to them for tracking student engagement than exist when offering in-person classes. An accurate withdrawal date is critical to ensure that the right amount of unearned title IV aid is returned, and students' accounts are properly reduced. However, we are persuaded by concerns about the need for continued development in these tools to make them consistently effective for this purpose, including the need for system interoperability. As such, we will not be finalizing this provision to provide more time to evaluate technological changes that can better track student engagement. The Department will continue to monitor the state of this tracking and may revisit this issue at a later date. In the meantime, we remind institutions of their obligation to retain adequate documentation to support their R2T4 calculations when students withdraw, and we encourage institutions to continue enhancing their systems to capture accurate student engagement for the purposes of determining if students are continuing enrollment at the institution.

Changes: The Department removes the provision under § 668.22(b)(3)(ii) for required attendance taking in distance education courses.

Leave of Absence (§ 668.22(d)(1)(vii))

Comments: Several commenters supported the leave of absence provision in § 668.22(d)(1)(vii) that provides additional flexibility for students enrolled in eligible prison education programs and stated that that it will reduce barriers to reenrollment and college completion for students who are faced with withdrawals during their studies.

Discussion: We agree with the commenters and thank them for their support.

Changes: None.

Comments: One commenter opposed the leave of absence provision. The commenter stated that their institution participates in the Second Chance Pell experiment under the Experimental Sites Initiative [31] and stated that the provision will create administrative burden and add more complexity. The commenter stated that if an institution offers a leave of absence, the confined or incarcerated student still may not be able to return within 180 days and would therefore need to be withdrawn in any event under the normal requirements for approved leaves of absence.

Discussion: We remind the commenter that § 668.22(d)(1)(vii) does not require an institution to grant a leave of absence to the confined or

[31] Experimental Sites—*https://experimentalsites.ed.gov/exp/approved.html.*

incarcerated individual. If the institution determines that a leave of absence would not be appropriate, it may take a more immediate approach, including an administrative withdrawal.

Changes: None.

Comments: One commenter stated that involuntary transfers of confined or incarcerated individuals often happen with no warning, giving those students no opportunity to request a leave of absence in advance. Since leaves of absence are often granted on the reasonable expectation that the student will return, this makes it unlikely that many requests will be approved by the educational institution. For this and other reasons, the commenter suggested that the Department allow for an exemption to R2T4 for confined or incarcerated students that experience involuntary transfers to another facility that result in an interruption to their programs.

Discussion: The Department acknowledges that the leave of absence provision may not be able to be utilized by all confined or incarcerated students who need it. However, for those who meet the requirements for such leave, the regulation will provide additional flexibility for them to resume their academic program at any point upon their return from the leave of absence. During negotiated rulemaking, the Department initially discussed a proposal to exempt confined or incarcerated individuals from R2T4 if the students withdrew from a program due to circumstances outside of their control, such as a correctional facility-wide lockdown or an involuntary transfer to a different facility. Upon further review, we determined that we do not have the legal authority to waive R2T4 requirements for a targeted group of students. In addition to our lack of legal authority, the Department heard concerns from several negotiators opposed to such an exemption. They pointed out that such an exemption may cause confined or incarcerated individuals to reach their Pell grant lifetime eligibility used (LEU) threshold faster, without obtaining academic credit. Also, the Department heard from negotiators that some postsecondary institutions have already established policies that account for involuntary breaks in prison education programs, such as waiving all charges related to the affected payment period, and an exemption might cause institutions to revise or remove beneficial student policies already in place. We thus decline the commenter's suggestion to include an exemption to R2T4 for confined or incarcerated students in these regulations.

Changes: None.

Comments: One commenter stated that students in community colleges often work, have families and unexpected events are likely to occur, and therefore they may not be able to request a leave of absence in advance.

Discussion: The Department believes the commenter may have misinterpreted the proposed revisions to § 668.22(d)(1)(vii). The only change to this provision is that a confined or incarcerated individual, in a term-based setting, will not have to come back from a leave of absence and resume where the student left off, and instead, the individual will be allowed to return at a different point in their prison education program. No other leave of absence provisions in this regulation were modified.

Changes: None.

Clock-Hour Programs (§ 668.22(f)(1)(ii))

Comments: One commenter disagreed with the Department's proposal to streamline and make consistent an institution's calculation of the percentage of the payment period completed for a clock-hour program. The commenter requested that the Department retain the current regulatory language that allows for two distinct methodologies: the cumulative method and the payment period method.[32]

Discussion: The Department declines to adopt the commenter's suggestion. We have observed that many times, when an institution uses the cumulative method, the percentage of funds earned by the institution is much larger than the time the student actually attended. This results in a much smaller return of title IV, HEA funds, which ultimately hurts a student who had to withdraw from a program. Less money returned to the Department means the student has used more of their lifetime Pell eligibility and allowable loan amounts without successfully completing coursework, see the example in Issue Paper 4: Withdrawals and Return of Title IV Funds,[33] and the Department does not believe this is a desirable result.

Because we determined that the payment period method leads to more accurate R2T4 calculations because it better aligns the R2T4 regulations with the regulatory definition of a clock-hour payment period under § 668.4(c), and promotes consistency across all calculations, the Department chose in § 668.22(f)(1)(ii) to standardize how institutions determine the percentage of the payment period completed for a clock-hour program by using only the payment period method. Providing a single more accurate and consistent way to calculate the percentage of the payment period completed will simplify R2T4 policy, reduce complexity and confusion, ensure that students are treated consistently, and eliminate an area of potential abuse.

Changes: None.

Modules (§ 668.22(l)(9))

Comments: Several commenters supported the provision in § 668.22(l)(9) to consider a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module. Commenters believed that the change simplifies the R2T4 calculation, reduces burden, and minimizes errors. A few commenters were also pleased that this change eliminates the complexity of the ''freeze date'' [34] policy. One commenter requested that the Department early implement this change.

Discussion: We thank the commenters for their support. Any regulations eligible for early implementation are listed in the *Implementation Date of These Regulations* section of these final regulations.

Changes: None.

Comments: Several commenters stated that the change in how modules factor into the R2T4 calculation in § 668.22(l)(9) will make it easier for students to obtain and institutions to retain large amounts of student loans through minimal participation, which will result in a gaming of the system. Commenters stated that the change could artificially increase the ''percentage earned'' component of the R2T4 calculation, resulting in student over-borrowing and excessive student loan burdens.

Some commenters provided examples to support their claims:

- If a student successfully completes a module, but fails to begin attendance in the second module, the R2T4 calculation will result in 100% of aid earned; and
- If a student withdraws during the first module and does not attend the second module, the denominator is only the days contained in the first module.

[32] NPRM—*https://www.federalregister.gov/documents/2024/07/24/2024-16102/program-integrity-and-institutional-quality-distance-education-return-of-title-iv-hea-funds-and.*

[33] Issue Paper 4—*https://www.ed.gov/sites/ed/files/policy/highered/reg/hearulemaking/2023/program-integrity-and-institutional-quality-session-1-issue-paper-r2t4-final.pdf.*

[34] For discussion of the ''freeze date,'' see 89 FR 60265; *https://www.federalregister.gov/documents/2024/07/24/2024-16102/program-integrity-and-institutional-quality-distance-education-return-of-title-iv-hea-funds-and.*

The student attends 5 weeks (35 days) of the first 8-week module (56 days). The fraction 35/56 translates to 62.5%. As this is greater than 60%, the student is considered to have earned 100% of the Title IV aid for the full 16-week term.

The commenters provided several alternatives to the Department's proposal, including: (1) prohibiting institutions from making subsequent disbursements to students in modules within the same payment period if the student does not attend the module; (2) including in the R2T4 calculation denominator the days for all modules for which the student began attendance, and all modules the student did not attend in which the student enrolled before the date of withdrawal and did not withdraw before the date of withdrawal; or (3) rescinding the proposed regulation.

Discussion: We disagree with the commenters that the change will result in a gaming of title IV, HEA aid. We acknowledge that, in the examples shared by the commenters, this change will produce outcomes that may prove more beneficial to students than our current requirements. However, we believe the reduction in administrative burden created by this regulatory change will more than outweigh the potential for students to receive more Federal student aid than they would have under the previous requirements. We note that students enrolled in modular programs still are required to comply with title IV requirements that are not impacted by this regulatory change, such as mandatory Pell recalculations. For a more detailed discussion on the R2T4 process, please refer to Volume 5 of the 2024–25 Federal Student Aid Handbook.[35] We plan to release guidance to help institutions understand and implement these changes.

We remind institutions that it is possible for an institution to break up title IV, HEA disbursements into smaller increments (by module, for example) to best meet the needs of the student, as long as the disbursement practices do not violate § 668.16(s). In breaking up title IV, HEA disbursements into smaller increments, a student may not be eligible for a future disbursement for a module that the student did not attend because the student did not successfully complete the period for which the loan was intended. In such situations, the concerns raised by the commenter about excessive awarding of aid relative to time spent attending would not occur.

We appreciate the commenters' alternative suggestions. We decline the first suggestion, because while these regulations modify how modules factor into the R2T4 calculation, the rulemaking did not extend to changing the manner in which title IV, HEA aid is disbursed within a payment period or period of enrollment. We decline the second suggested alternative, because it appears to restate existing requirements, which these final regulations seek to simplify. Finally, for all of the reasons set forth in the NPRM and in this preamble, see, *e.g.,* 89 FR 60256, we have determined this new provision is appropriate and improves administration of the title IV, HEA programs, and we thus decline to rescind it.

Changes: None.

5. Federal TRIO Programs (§§ 643.3, 644.3, 645.3, 646.3, 647.3)

General Support and Requests for Expansion

Comments: Many commenters supported the proposed amendments to the TRIO regulations, and a group of commenters stated that there is substantial and enthusiastic support to expand eligibility among TRIO counselors and practitioners. These commenters believe that the proposed expansion of eligibility would help certain noncitizen students included within that proposed definition to access vital educational services, close the achievement gap, and promote equity in education.

However, the Department received additional, vocal feedback from several commenters who repeatedly emphasized that it is important that all students, notwithstanding their immigration status, have equitable access to education. Additionally, many commenters advocated for the Department to expand student eligibility across all TRIO programs, and not just those three TRIO programs included within the Department's proposed rule. These commenters note the importance of providing students with support while in college to increase the students' chances of graduating and gaining the skills necessary to be successful in the workforce, support which can be more directly provided by the SSS and McNair programs. Several of these commenters also argued that including the SSS and McNair programs would help undocumented students receive the support and services necessary to be successful in college and motivate more of these students to pursue graduate education. Still other commenters provided suggested language for modifying the proposed regulatory changes to include other noncitizens who have previously attended high school in the U.S., territories, or Freely Associated States. Furthermore, the Department received feedback noting that there is no statutory restriction that requires TRIO providers to offer services only to students who are citizens, and that the HEA makes no mention of such a prohibition for the TRIO programs.

Discussion: We thank the commenters for their support. As these commenters have pointed out, many noncitizens (including undocumented students) would greatly benefit from TRIO services based on their status as a disadvantaged group facing challenges in postsecondary enrollment and completion. We are persuaded by commenters that the proposed expansion of student eligibility for TRIO programs under the NPRM, which was focused on noncitizen students enrolled or seeking to enroll in a high school under TS, UB and EOC, was too narrow both in scope of additional populations to be served, as well as in its omission of the SSS and McNair programs. We agree with those commenters who noted that the HEA does not limit participation in the TRIO programs based on immigration status and find that the proposed rule was restrictive in its continued consideration of immigration status as a barrier to participation in the TRIO programs. We are also persuaded that an expansion of student eligibility under only certain TRIO programs would create confusion, as many grantees administer grants under more than one TRIO program. Additionally, expanding student eligibility for only certain TRIO programs would increase administrative burden by requiring grantees to deny similarly situated noncitizens from participating under certain TRIO programs, but not others.

As the TRIO programs provide a pipeline of services for eligible participants, we believe it would frustrate the purpose of the TS, UB and EOC programs to not provide (at minimum) a correlating extension of student eligibility under the SSS and McNair programs. However, as noted above, the Department now recognizes that the proposed rule's focus on ''disadvantaged students who have enrolled or seek to enroll in a high school in the United States, territories, or Freely Associated States'' would continue to perpetuate consideration of immigration status as a barrier to participation in the TRIO programs in a

[35] Federal Student Aid Handbook—*https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2024-2025/vol5.*

manner that is not supported by the text of the HEA itself. For the foregoing reasons, the Department has decided not to finalize the Federal TRIO provisions, to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students, irrespective of immigration status.

Changes: The Department is not finalizing the TRIO provisions except for the technical change mentioned above and may reconsider TRIO student eligibility through future rulemaking efforts.

Comments: Two commenters were supportive of the changes but were concerned that expanding eligibility could bring some political tension and put TRIO's funding in jeopardy.

Discussion: The TRIO programs have been around for over 60 years, making these programs one of the oldest grant programs authorized under the HEA. These programs continue to exist because they are still needed and must continue to evolve to meet the needs of those students that the Secretary identifies as disadvantaged in postsecondary access and attainment. We are confident that these programs will continue to serve students and adapt to serve new groups of qualified individuals from disadvantaged backgrounds.

Changes: The Department removes the TRIO provisions except for the technical change mentioned above and may reconsider TRIO student eligibility through future rulemaking efforts.

Requests To Remove the Proposed Prohibition on Direct Cash Stipends in the Upward Bound Program

Comments: A few commenters were disappointed that the NPRM limited the availability of cash stipends to UB participants by immigration status, noting that the limitation would run counter to the Department's stated goal of expanding access to higher education. Another commenter noted that these restrictions would place a burden on program administrators to track differences in eligibility among students within the program and create privacy concerns for students as they disclose their legal status to determine eligibility for the stipend.

Discussion: As noted in the proposed rule, PRWORA prohibits ''Federal public benefits'' from being awarded to persons who are not able to demonstrate certain types of eligible noncitizen statuses as a ''qualified alien'' under 8 U.S.C. 1641(b). The general definition of a ''federal public benefit'' is provided under U.S.C. 1611(c)(1). Federal agencies are generally responsible for identifying which of their programs provide Federal public benefits. The Department stated its determination within the NPRM that the direct cash stipends provided under the UB program likely represent a ''similar benefit'' to those enumerated benefits under 8 U.S.C. 1611(c)(1)(B) for which, where payment is provided to an ''individual, household, or family eligibility unit[,]'' falls under the restrictions of PRWORA. Therefore, while the Department is not finalizing this provision, compliance for PRWORA restrictions operates independent of these rulemaking efforts.

Changes: The Department is not finalizing the TRIO provisions and may reconsider TRIO student eligibility through future rulemaking efforts.

Clarifying Who Is Eligible for the TRIO Programs

Comments: Certain commenters sought clarity on which individuals would be eligible under the Department's proposed rule, including income requirements, potential eligibility of middle school students, and whether only a certain percentage of noncitizens would be eligible to participate under the proposed rule.

Discussion: Because the Department is not finalizing this provision, we decline to provide guidance as to how these changes would have been operationalized. However, we note that section 402A of the HEA outlines the documentation requirements for low-income individuals under the TRIO programs.

Changes: The Department does not finalize the TRIO provisions and may reconsider TRIO student eligibility through future rulemaking efforts.

Suggested Technical Edits for Students From Territories and Freely Associated States

Comments: One commenter points out that there are multiple instances in the proposed TRIO regulations where American Samoa is omitted while other Pacific territories are explicitly named. Additionally, the commenter notes that the regulatory text includes outdated references to the Republic of Palau, which is no longer part of the Pacific Trust Territory, but instead a Freely Associated State.

Discussion: The Department notes that Natives of American Samoa are eligible to participate in the TRIO sections as a ''national of the United States.'' Therefore, no change is needed to ensure the continued TRIO program participation of these individuals.

The suggested change of listing the Republic of Palau as among the ''Freely Associated States'' in the EOC and TS programs is well taken as the U.S.-Palau Compact of Free Association was ratified in 1993 and came into effect on October 1, 1994. In addition to listing the Republic of Palau among the ''Freely Associated States'' in the EOC and TS programs, we will also remove references to the ''Trust Territory of the Pacific Islands'' in the TRIO regulations, as this agreement dissolved in 1990. The Department considers these to be technical changes to update outdated language. Another technical change we will be making in the UB program is removing the periods at the end of paragraphs § 645.3 (a)(1) through (4) and adding, in each place, ''; or'' for consistency purposes.

Changes: We have added ''Republic of Palau'' to the list of residents in the Freely Associated States that are currently eligible to participate under §§ 643.3(a)(1)(v) and 644.3(a)(1)(v). We have removed ''Trust Territory of the Pacific Islands (Palau)'' from §§ 643.3(a)(1)(iv) and 644.3(a)(1)(v). We have removed ''Trust Territory of the Pacific Islands'' from §§ 645.3(a)(4) and 647.3(a)(4). We have also removed the periods at the end of paragraphs § 645.3 (a)(1) through (4) and added, in each place, ''; or''.

Opposition to Expanding Eligibility

Comments: A group of commenters argued that the Department's proposed rule would be contrary to the legislative intent of the HEA, and that these changes would siphon resources away from currently eligible low-income American citizens. The commenters also asserted that the proposed rule incorrectly cited requirements under *Plyler* v. *Doe* and programs under the Elementary and Secondary Education Act (ESEA) as a parallel for TRIO programs. These commenters also expressed a concern that grantees in states with more newly eligible noncitizens would vie for a larger share of the existing TRIO funding, and thereby reduce available funding for grantees in other states.

An additional commenter believed the Department's proposal to make noncitizens who are enrolled in or seeking to enroll in a U.S. high school eligible for the TRIO programs would be in contrast with Federal immigration policy and certain statements of Congress in 8 U.S.C. 1601.

Finally, one commenter argued that the amendments to the Federal TRIO programs might undermine their flexibility and effectiveness. The commenter believes regulatory changes should be carefully considered to ensure they do not inadvertently reduce the

availability or effectiveness of services provided to TRIO program participants.

Discussion: Although the Department is not finalizing this provision to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students, the Department disagrees with the comments of opposition on several grounds. As a factual matter, the Department's NPRM did not state that TRIO is governed by ESEA, nor did the NPRM cite *Plyler* v. *Doe* in the Department's rationale for the proposed changes. Regarding the commenters' concerns about newly eligible noncitizens taking resources away from currently eligible low-income American citizens, the TRIO programs provide services to several groups from disadvantaged backgrounds and this work would continue in the event of an expansion of student eligibility. Additionally, we disagree with the commenters' concerns that TRIO funding could be diverted to grantees in states with a higher distribution of newly eligible students, as the existing procedures for selecting and distributing funding amongst eligible grantees help to safeguard against an inequitable distribution of resources across grantees.

In response to the commenter who raised concerns regarding noncitizens receiving any public resources under TRIO, the Department reiterates that not all benefits or services provided are the type of ''Federal public benefits'' Congress sought to restrict in enacting PRWORA. Indeed, Congress specifically exempted several Federal public benefit programs in PRWORA in order to allow these programs to provide services to all individuals regardless of their immigration status, thereby directly undercutting the commenter's position that certain noncitizens should be entirely deprived of aid and assistance of aid from the Federal government.[36] The fact that a Federal program was not specifically included amongst those specifically excluded benefit programs does not necessitate the conclusion that it provides ''Federal public benefits'' for purposes of PRWORA. Rather, providers of Federal benefits, such as the Department of Education, are required to ''determine whether the particular program they are administering provides a 'federal public benefit[.]' ''[37] Additionally, ''[i]f one program provides several public benefits, [PRWORA's] requirements apply only to those benefits that are non-exempted federal public benefits under [PRWORA].''[38] The Department also clarifies its stated reasoning, in the proposed rule, noting that the Department's stated position on 89 FR print page 60267 of the **Federal Register** should have read ''the Department believes that TRIO grant programs providing student support services in the secondary context do not constitute the type of ''incentive for illegal immigration provided by the availability of public benefits'' that PRWORA was enacted to discourage.'' The Department believes this position would be consistent with the omission of other programs that provide non-postsecondary services from the requirements of PRWORA, such as Head Start and elementary and secondary education, as noted within the proposed rule. While the Department has determined not to finalize its proposed provisions, the Department nevertheless stands by its stated position that not all benefits and services provided under the TRIO programs are subject to restriction under PRWORA.

Changes: The Department does not finalize the proposed TRIO provisions and may reconsider TRIO student eligibility through future rulemaking efforts.

VIII. Regulatory Impact Analysis

Executive Orders 12866, 13563, and 14094

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094. The Department estimates present value net cost of $27,349,749 over ten years at a 2 percent discount rate. This is equivalent to an annualized net cost of $3,044,753 over ten years. Additionally, we estimate annualized quantified costs of $9,423,657 related to paperwork burden. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), the Department has determined that the benefits of this final regulatory action would justify the costs.

The Department has also reviewed the regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

[36] 8 U.S.C. 1611(b).

[37] Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344 (Nov. 17, 1997).

[38] *Id.* at 61346.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

The Department issues these final regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, the Department selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

The Department has also determined that this regulatory action does not unduly interfere with State, local, territorial, or Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, the Department compared the final regulations to the current regulations. In this regulatory impact analysis, the Department discusses the need for regulatory action, responds to comments related to the RIA in the NPRM, discusses the potential costs and benefits, and the regulatory alternatives we considered. Elsewhere in this section under Paperwork Reduction Act of 1995, the Department identifies and explains burdens specifically associated with information collection requirements.

1. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has found that this rule does not meet the criteria in 5 U.S.C. 804(2).

2. Need for Regulatory Action

The Department has identified a significant need for regulatory action to address inadequate protections for students and taxpayers in the current regulations.

Distance Education

The HEA and the Department's regulations provide that institutions of higher education may offer programs through distance education. Currently, however, the Department has very limited data about students enrolled in distance education, which limits the Department's ability to answer important questions about student pathways and outcomes through in-person, distance, and hybrid education. For example, an institution may offer a program that is provided on campus and a related program of the same CIP code that is provided online. The Department is currently unable to distinguish between those two programs in the data it currently receives, which limits its capacity to provide helpful and reliable information to students, families, institutions, and the public. A notable example is the Department is unable to distinguish between two such programs for College Scorecard program-level data including debt, earnings, and completion. The Department is also unable to determine whether institutions have reached the 50 percent threshold for distance education enrollment announced in Dear Colleague Letter GEN–23–09.[39] This is important because institutions must obtain further accreditor approval beyond the initial approval to deliver distance education programs when they enroll at least 50 percent of their students in distance education or offer at least 50 percent of their courses (or 50 percent of a program) via distance education.

The final regulations for distance education change institutional reporting requirements to specify a student's distance education enrollment status.

This change enables the Department to obtain better data and more meaningfully compare the outcomes of students, particularly for those who are enrolled in similar programs that are delivered using different modalities. It also allows the Department to better monitor and oversee the aid programs and institutional accrediting agencies by ensuring institutions are receiving appropriate review and approval of distance education offerings.[40]

R2T4

The R2T4 regulations govern the process institutions must conduct when a title IV, HEA recipient ceases attendance during a payment period or a period of enrollment. An R2T4 calculation determines, based on the proportion of a payment period or period of enrollment a student completed, whether funds must be returned by the school and/or student, or whether the student is eligible for a post-withdrawal disbursement. R2T4 calculations differ based on academic calendars and program format, including the use of clock hours or credit hours and the use of module courses within terms. R2T4 consistently ranks among the top ten compliance findings for institutions, is the subject of an entire volume of sub-regulatory guidance in the FSA Handbook and yields complex and challenging questions. Therefore, the Department believes that there is a need to take regulatory action immediately to update and clarify the regulations.

Withdrawal Exemption

For some institutions, the R2T4 process is complex, with a high likelihood of errors, including issues such as incorrectly determining the withdrawal date or the number of days in a payment period. To simplify the process for institutions, these regulations establish a withdrawal exemption in which an institution does not need to conduct an R2T4 calculation if the following conditions are met: (1) the student is treated as never having begun attendance; (2) the institution returns all title IV, HEA aid disbursed to the student including any title IV credit balance for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any payment period or period of enrollment balance owed by the student to the institution due to the institution's returning of title IV funds to the Department.

The final withdrawal exemption reduces the likelihood that a student owes money back to the school, allows the student to not exhaust annual and aggregate subsidized aid, including Pell Grants, and reduces the likelihood the student will have a loan balance associated with a program they may not finish.

Determination of Withdrawal Status

This provision requires that an institution that is required to take attendance must, within 14 days of a student's last date of attendance, document a student's withdrawal date and maintain the documentation as of the date of the institution's determination that the student withdrew. We reiterate that this is not a requirement that the student be administratively withdrawn or that an R2T4 calculation be completed at that time. If the student subsequently begins attendance within 30 days of the date of determination, then there is nothing further an institution must do as it relates to the R2T4 calculation (30 days)

[39] *https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education.*

[40] *https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education.*

or the return of funds to the Department (45 days).

Leave of Absence

On July 1, 2023, the Department published final regulations that detailed Pell Grant eligibility for confined or incarcerated individuals in PEPs.[41] These regulations did not address students who are incarcerated and who face involuntary interruptions to their academic programs. For example, an entire correctional facility may be locked down due to a security issue, interrupting a student's progress in their PEP.

With these final regulations the Department makes changes to the regulations governing leave of absence to allow a student who is incarcerated to not have to return from the leave of absence where the student left off, and instead, the individual could return to a different point in their PEP. This applies to programs of any structure, including term-based programs. This change increases flexibility for institutions and will help boost student retention in PEPs.

Clock-Hour Programs

As a part of the R2T4 calculation, institutions must determine the percentage of the payment period or period of enrollment the student completed based on scheduled clock hours if enrolled in a clock-hour program. There are currently two ways that institutions can make this determination: the payment period method and the cumulative method. The cumulative method (as described in the Analysis of Public Comment and Changes section) usually results in a significant amount of aid earned by the student compared to the actual time the student attended during the payment period. With these final regulations the Department has streamlined this calculation so that the payment period method is the single, standardized method across all clock-hour programs.

R2T4 and Modules

In 2021, the Department published final regulations outlining several changes to R2T4 and modules.[42] The regulations immediately raised a question about how an institution determines whether the days in a module are included in the R2T4 calculation. The answer is complex and depends on several variables, including whether the institution uses an R2T4 freeze date and the type(s) of title IV, HEA aid for which the student was eligible during the payment period or period of enrollment.

With these final regulations the Department simplifies the determination by only including days in the module if the student actually attends the module. This change reduces complexity and errors as institutions will no longer need to use a freeze date or differentiate between Pell Grant and Direct Loan recipients.

3. Summary of Comments and Changes From the NPRM

TABLE 3.1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS

Provision	Regulatory section	Description of final provision
Distance education		
Definition of *distance education course*	600.2	Removes the phrase "residency experiences" from the definition.
Definition of *additional location*	600.2	Does not finalize the definition related to a virtual location.
Definition of a week of instructional time	668.3	Does not finalize the limitation on asynchronous clock-hour programs being offered through distance education.
Reporting enrollment in distance education or correspondence courses.	668.41	Updates the effective date from July 1, 2026, to July 1, 2027.
Return to title IV		
Treatment of Title IV Grant and Loan Funds if the Recipient does not Begin Attendance at the Institution (§ 668.21).	668.21	Does not finalize the provision to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.
Withdrawal Exemption	668.22	Updates § 668.22(a)(2)(ii)(A)*(6)(iv)* to replace "any current year balance" with "any payment period or period of enrollment balance" owed by the student to the institution due to the institution's returning of title IV, HEA funds to the Department. Also include references to funds received by a parent so they are covered by this exemption as well.
Required attendance taking in distance education courses.	668.22	Does not finalize the proposal require attendance taking in distance education courses.
Federal TRIO Programs		
Talent Search program	643.3	Does not finalize the proposed changes to this provision.
Educational Opportunity Centers program	644.3	Does not finalize the proposed changes to this provision.
Upward Bound programs (Regular, or Math and Science).	645.3	Does not finalize the proposed changes to this provision.

General Comments

Comments: One commenter claimed that the Department significantly underestimated the compliance costs for this regulatory package, which will necessitate significant changes to institutional policies and processes, will involve large-scale duplicative reporting, and will require

[41] *https://www.federalregister.gov/documents/2022/10/28/2022-23078/pell-grants-for-prison-education-programs-determining-the-amount-of-federal-education-assistance.*

[42] Distance Education and Innovation–final regulations: *https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation.*

redevelopment of information systems to support the new requirements, all of which will ultimately increase costs for students.

Discussion: While the commenters did not provide any data to justify their assertions, after careful review of the final regulations, and based on the Department's administrative experience, the Department increased burden estimates as described in the Distance Education cost analysis section of the RIA. In the NPRM, we estimated a cost burden of $381,560 in the first year across all impacted institutions under § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses. In the NPRM, the Department did not estimate a cost for transitioning to synchronous instruction for affected clock-hour programs. In these final regulations, the Department has removed several provisions, which reduce levels of burden from what was included in the NPRM. This includes not finalizing the provision related to synchronous clock hour programs.

Additionally, the Department has not finalized the provision under § 668.22(b)(3)(ii) for required attendance taking in distance education courses, which reduces burden associated with that previously proposed requirement.

Changes: In total, the Department now estimates reviewing and revising these procedures will cost approximately $10,057,889 in the first year across all impacted institutions.

Comments: One commenter noted that the proposed provisions could force institutions to hire additional staff to manage an increased documentation and compliance workload.

Discussion: The Department acknowledges that some institutions may need to increase or re-allocate staff duties and responsibilities to comply with these final regulations. The costs described in the RIA account for potential increased costs for institutions as a result of these final regulations. In the NPRM, we estimated a cost burden of $381,560 in the first year across all impacted institutions under § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses. In the NPRM, the Department did not estimate a cost for transitioning to synchronous instruction for affected clock-hour programs. In these final regulations, the Department has removed several provisions, which reduce levels of burden from what was included in the NPRM. This includes not finalizing the provision related to synchronous clock hour programs.

Changes: In total, the Department now estimates reviewing and revising these procedures will cost approximately $10,057,889 in the first year across all impacted institutions.

Asynchronous Distance Education in Clock-Hour Programs

Comments: One commenter alleged that the Department has not sufficiently identified the proportion of asynchronous learning activities that do not meet the Department's standard. This commenter argued that a reasoned analysis must include an estimate of the cost to students and institutions of removing asynchronous distance education instruction in clock-hour programs and a comparison to any benefits from those proposed changes. The commenter further opined that failing to provide such an estimate would render the provision arbitrary and capricious. Another commenter opined that the proposed regulations would disproportionately increase administrative burden on institutions that serve students exclusively through distance education. One commenter estimated that at least 75 percent of asynchronous activities would be disallowed under the proposed regulations but are of sufficient quality to merit equal treatment with synchronous activities, forecasted that the value of asynchronous learning will increase over time, and predicted that the costs to institutions and students for disallowing asynchronous distance education in clock-hour programs would therefore also rise over time. One commenter noted that faculty offering asynchronous coursework via distance education in clock-hour programs may experience increased workload and potential dissatisfaction because of the need to redesign their courses.

One commenter noted that it is the responsibility of the Department, not public commenters, to provide reasoned burden and cost estimates for the Department's proposed regulatory provisions, and that it is inappropriate for the Department to avoid such necessary calculations merely because commenters have not offered their own calculations.

Discussion: When developing cost and benefit analysis of proposed rules, the Department relies on its own data sources, publicly available data sources, and the administrative experience of Department staff. In instances where there is a lack of certainty, the Department may rely, in part, on data or evidence provided to the Department through public comment on the NPRM. That is why, in section 3.A.3 of the NPRM, the Department invited comments from the public on its estimates contained in the NPRM. The Department requested comments to ensure that the NPRM's estimates accurately reflected realistic assumptions about the average burdens that the regulations would impose on affected entities. The Department believes that the cost analysis included in the RIA fully considers the potential costs and benefits of the final regulations based on the Department's own data sources, publicly available data sources, and the administrative experience of Department staff. Additionally, for these final regulations, the Department revised its cost estimates upward partly in response to high-quality comments from the public. While these high-quality comments did not provide specific data, they did provide convincing qualitative information that led the Department to further consider potential costs, based on the Department's administrative experience, under the final regulations.

Changes: The Department removed limitations on asynchronous distance education in clock hour programs. In total, the Department now estimates reviewing and revising these procedures will cost approximately $10,057,889 in the first year across all impacted institutions.

Comments: One commenter estimated costs between $1.5 and $2.4 million for 113 community colleges ($12,500 to $20,500 per institution) resulting from the proposed regulations because these institutions would need to review their clock-hour programs to determine which should be converted into credit-hour programs, as well as update relevant course assignments, classroom lectures, and learning materials. This commenter requested an implementation date no earlier than 2027, noting that curriculum changes require local faculty review, employer input, and statewide approval which can take approximately 18 months to complete.

One commenter predicted that cost and burden from the proposed elimination of asynchronous instruction for clock-hour programs would divert educational resources and disproportionately impact first-generation, adult, and marginalized students.

Discussion: When developing cost and benefit analysis of proposed rules, the Department relies on its own data sources, publicly available data sources, and the administrative experience of Department staff. In instances where there is a lack of certainty, the Department may rely, in part, on data or evidence provided to the Department

through public comment on the NPRM. That is why, in section 3.A.3 of the NPRM, the Department invited comments from the public on its estimates contained in the NPRM. The Department requested comments to ensure that the NPRM's estimates accurately reflected realistic assumptions about the average burdens that the regulations would impose on affected entities.

As described in the preamble to these final regulations, the Department has decided not to finalize the proposal to limit asynchronous clock hour programs from accessing title IV, HEA funds. By not finalizing this provision there is no longer any burden associated with this provision in the final rule. It also means the concerns brought up by the commenters are no longer relevant. The Department believes that the cost analysis included in the RIA fully considers the potential costs and benefits of the final regulations based on the Department's own data sources, publicly available data sources, and the administrative experience of Department staff.

Changes: None.

Attendance Taking for Distance Education Courses

Comments: We received many comments that stated the Department underestimated the administrative and financial burden to postsecondary institutions, including community colleges, by requiring attendance taking for distance education courses; including the significant investment in new technologies. Commenters believed that the analysis was not properly justified and also lacked reference to the negative impact this may have on other stakeholders like instructors and students.

Discussion: As discussed in the preamble, the Department is statutorily required to ensure the proper return of title IV, HEA funds when a student withdraws before completing a payment period or period of enrollment. Attendance taking is specifically provided for in the statute and is crucial for the Department to carry out its statutory responsibilities. We remain concerned about ensuring that withdrawals are properly tracked in a fully online environment, where we have observed that institutions have greater tools available to them for tracking student engagement than exist when offering in-person classes. An accurate withdrawal date is critical to ensure that the right amount of unearned title IV, HEA aid is returned, and students' accounts are properly reduced. However, we are persuaded by concerns about the need for continued development in these tools to make them consistently effective for this purpose, including the need for system interoperability. As such, we are not finalizing this provision to provide more time to evaluate technological changes that can better track student engagement.

Because the Department is not finalizing the provision under § 668.22(b)(3)(ii), the concerns about burden raised by commenters are no longer relevant. Institutions will not be required to take attendance in a distance education course unless there are other existing reasons for why they must do so. As such, there are no added burden costs from this withdrawn provision. We have updated the relevant parts of the RIA to remove any burden estimates from this proposed provision.

Changes: The Department does not finalize the proposal under § 668.22(b)(3)(ii) for required attendance taking in distance education courses. We also removed the associated burden from the estimated costs of these final regulations.

Distance Education Reporting

Comments: A few commenters claimed that the Department understated the costs associated with the proposed reporting requirements for distance education. One commenter further observed that institutions would pass these costs along to students. One commenter estimated one-time costs in the low thousands of dollars for updating data collection procedures, which would amount to approximately $2 million to $2.5 million across their system of institutions. This commenter requested an implementation date no sooner than 2027 to provide institutions time to update their data collection systems.

Discussion: Upon further review, the Department agrees that the NPRM did not fully account for costs that may be expected to result from the distance education reporting requirements; however, the Department strongly disagrees that this final regulation would result in increased costs for students. The Department estimates that costs resulting from these requirements would primarily result from increased labor hours and would only occur in the first year after the promulgation of this final regulation. In light of comments received from the public on the cost estimates included in the NPRM, the Department reconsidered the potential burden of this final regulation, and after reviewing additional data submitted by commenters and data maintained by the Department, revised cost estimates for this final regulation to more fully account for the cost of increased staff labor hours to update data collection policies and procedures. We were able to incorporate this additional information in this final regulation to update the estimated burden. As noted earlier, this provision will not begin until July 1, 2027. We believe this date provides institutions with sufficient time to prepare for implementation of this final regulation.

Changes: As described in the RIA, in the NPRM the Department initially estimated a cost burden for distance education reporting of $381,560 in the first year across all impacted institutions. The Department estimates costs of $10,057,889 in the first year for impacted institutions.

Comments: Several commenters raised concerns about the costs, in dollars and in administrative time, associated with reporting a virtual location for distance learning courses, particularly for students enrolled in a combination of in-person and distance-education courses, and that such reporting could potentially impact the quality of services available to students.

One commenter opined that the Department's analysis in the NPRM did not account for the costs associated with declaring a virtual location for all distance education courses. The commenter further noted that online learning is especially important in rural states, citing data from the New Mexico Legislative Finance Committee that Native Americans and Hispanics earn 43 and 49.6 percent of their credits, respectively, via distance education, and that these online students are predominantly women, older, and non-white, which suggests that the proposed changes would disproportionately impact these populations.

Discussion: As discussed in the preamble above, the Department has decided not to move forward with the reporting of a virtual location. There is thus no burden associated with this provision in the final regulations.

Changes: We have removed the burden associated with virtual location reporting.

Comments: One commenter observed that NSLDS enrollment reporting findings consistently rank among the top 10 audit and program review findings, with respective findings rates of 16.8 percent and 8.8 percent, which suggests that the Department underestimated the labor and costs of reporting given longstanding structural deficiencies with NSLDS that reflect a faulty and overly complex reporting process.

Discussion: Upon further review, the Department agrees that the NPRM cost estimates for Distance Education reporting underestimated burden for Distance Education reporting. The Department increased burden estimates as a result of further review.

Changes: The Department increased the burden estimate from $381,560 to $10,057,889 in the first year across all impacted institutions for distance education reporting.

Failure To Begin Attendance

Comments: One commenter noted that it is currently unclear which, if any, of the Department's loan forgiveness initiatives will withstand litigation, casting uncertainty on the costs associated with allowing students who fail to begin attendance to repay loans under the terms and conditions of the promissory note as proposed at § 668.21(a)(2)(ii). This commenter further asserted that the estimates the Department included in the NPRM relative to this provision are no longer accurate, in part because the Saving Against a Valuable Education (SAVE) repayment plan will likely continue to fail in ongoing legal proceedings.

One commenter argued that the Department's cost estimate for this provision, in only considering compliance costs for loan services, did not account for: (1) an increased number of persons seeking loans; (2) the resulting increased costs and transfers; or (3) transfers from the government to borrowers for allowing these borrowers to repay over time rather than immediately upon demand. The commenter questioned whether the benefits of allowing repayment over time for students who legitimately planned to attend would justify the costs from those that would enroll only to obtain loans.

Discussion: As explained elsewhere, the Department has chosen not to move forward with this provision in these final regulations. As a result, there is no cost associated with this provision.

Changes: The Department removed the change in § 668.21 to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

4. Discussion of Costs, Benefits, and Transfers

The Department has analyzed the costs and benefits of complying with these regulations. Although many of the associated costs and benefits are not easily quantifiable, the Department currently believes that the benefits derived from the regulations outweigh the associated costs, as discussed in sections 4.B. and 4.C. below.

The regulations, which will apply to over 6,000 postsecondary institutions, will help ensure students are well served by the institutions of higher education they attend and ensure that the Federal Student Aid programs work in the best interests of students. These final regulations will also reduce the likelihood of reporting errors in R2T4 and will standardize and simplify related processes and calculations.

Due to the large number of affected recipients (5,898, as discussed more fully in the discussion of Establishing the Baseline (Section 4.A)), the variation in likely responses to any regulatory change, and the limited information available about current practices, the Department is not able to precisely estimate the likely costs, benefits, and other effects of the regulations. Despite these limitations and based on the best available evidence as explained in the discussion of Establishing a Baseline (Section 4.A), the Department estimates net present value costs of $27,349,749 over ten years at a 2 percent discount rate. This is equivalent to an annualized cost of $3,044,753 over ten years. The regulations are expected to result in estimated costs of $27,896,744 in the first year following publication of these final regulations.

TABLE 4.1—NET ANNUAL COSTS, YEARS 1 THROUGH 10

Year	Net annual costs
Year 1	$27,896,744
Year 2	0
Year 3	0
Year 4	0
Year 5	0
Year 6	0
Year 7	0
Year 8	0
Year 9	0
Year 10	0
Total Net Present Value (NPV), 2 percent	27,349,749
Annualized, 2 percent	3,044,753

As discussed in the Cost Estimates section (Section 4.B), the Year 1 costs include one-time costs associated with reviewing and making necessary changes to policies, procedures, and training to implement the regulations.

The assumptions, data, methodology, and other relevant materials, as applicable, on which the Department relied in developing its estimates are described throughout this Regulatory Impact Analysis (RIA).

4.A. Establishing a Baseline

4.A.1. Number of Affected Entities

Institutions of higher education will be subject to the final regulations. For purposes of establishing a baseline, this includes the number of institutions of higher education participating in programs under title IV of the HEA (such as Direct Loans, Federal Work Study, and Pell Grants).

For purposes of this analysis, the Department bases its analysis of ''postsecondary entities'' on ''institutions of higher education'' as defined in section 102 of the HEA. It is assumed that 5,898 postsecondary institutions will be impacted by the regulations. Among postsecondary institutions, institutions range from small, private, professional schools with fewer than 5 students enrolled in the fall of 2023 to large, public research universities with enrollments of more than 71,000 students and institutions operating mostly virtually with

enrollments in excess of 156,000 students.

It is important to note that, across postsecondary institutions, there is wide variation in the number of students served, the number of employees, administrative structure, and annual revenue. This wide variation makes estimating the effects of the regulations challenging, and the Department notes that the estimates provided are intended to reflect the average burden across the full spectrum of affected entities. As a result, estimates may be lower than the actual burden realized by, for example, larger institutions or institutions with more complex administrative structures, and larger than those actually realized by smaller institutions with less complex administrative structures.

4.A.2. Wage Rates

Unless otherwise specified, the Department's model uses mean hourly wages for personnel employed in the education sector as reported by the Bureau of Labor Statistics (BLS) [43] and a loading factor of 2.0 to account for the employer cost of employee compensation and benefits and indirect costs (*e.g.,* physical space, equipment, and technology costs). When appropriate, the Department identifies the specific occupation used by the BLS in its tables to support the reader's analysis. The Department assumes that inflation-adjusted wage rates remain constant for the duration of the time horizon.

4.A.3. Other Information

In addition, throughout this RIA, some described calculations have results that are fractions. To improve readability, the Department presents these results as rounded totals in the text (*e.g.,* 1.95 or 3,450 instead of 1.9478 or 3,449.6786), but retains the unrounded value for purposes of its underlying calculations.

4.B. Costs of the Final Regulations

In this section, the Department estimates monetized cost burdens associated with the final regulations. To assist the public in reviewing these estimates, the Department has subdivided this analysis, when appropriate, into the relevant subparts. As described below, the Department estimates a first-year cost of $27,896,744. The Department estimates the changes will result in a total annualized cost of $3,044,753.

The Department estimates that, upon promulgation of the regulations, all affected entities will need time to read and understand the rule. Based on the Department's administrative experience, we assume this will require, on average, six hours from an education administrator (educational administrator (postsecondary), loaded wage rate of $117.32/hour) and six hours from a lawyer (postsecondary, loaded wage rate of $172.76/hour) for each of the 5,898 IHEs. In total, the Department estimates that reading and understanding the rule will have a one-time cumulative cost of approximately $10,265,351 across all institutions of higher education.

Distance Education—Reporting and Disclosure of Information

As a result of changes to § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses, the Department estimates that each IHE will need to review and revise reporting policies and procedures. In response to comments on this section of the NPRM RIA, we increase the number of hours it would take to review and revise reporting policies and procedures. We assume this will require 20 hours from an education administrator and 8 hours from an administrative assistant (loaded wage rate of $43.58/hour) for each of the 3,732 IHEs [44] that reported offering at least one distance education course. In the NPRM we estimated a cost burden of $381,560 in the first year across all impacted institutions. In total, the Department now estimates reviewing and revising these procedures will cost approximately $10,057,889 in the first year across all impacted institutions.

Return of Title IV Funds—When Student Withdraws

The addition of § 668.22(a)(2)(ii)(A)(6) will exempt institutions from performing an R2T4 calculation resulting from a student withdrawal by providing flexibility in conducting R2T4 calculations when certain conditions are met. The Department assumes that institutions will need to review and revise their R2T4 policies and procedures. The Department estimates that the change will require eight hours from an education administrator and two hours from a lawyer for each IHE for a total first year cost of approximately $7,573,504 across all 5,898 institutions.

4. C. Non-Monetized Benefits

Distance Education

Changes to provide better data on student outcomes for students enrolled in distance education will provide benefits for students in allowing reporting and evaluations of outcomes for students depending on their enrollment in distance education, traditional on-site instruction, or a combination of the two. Such analysis is increasingly advantageous to determine the educational and cost effectiveness of postsecondary instruction as it becomes more available at a distance.

R2T4

Benefits to Students

If institutions choose to implement the optional withdrawal exemption, students who withdraw will not owe any balance related to any returned title IV, HEA aid to the Department or the institution. This will alleviate students from the burden of having to repay title IV, HEA dollars or owing an institutional debt related to a payment period or period of enrollment that they did not complete.

Students who are incarcerated at times may need to (or be forced to) take a break in their PEP, including activities out of their control such as prison-wide lockdowns or involuntary transfers to other facilities. The regulations will benefit incarcerated students by allowing them to not have to come back from the leave of absence where they left off (as current regulations require), and instead, the student could come back at a different point in their eligible prison education program, affording greater flexibility in their academic progression.

Benefits to Institutions

Institutions will benefit under several of these final regulations. Currently, an institution offering clock-hour programs may use two methods to determine the percentage of the payment period completed: cumulative, and by payment period. These regulations will require institutions to use the payment period method when calculating the number of scheduled hours completed in clock-hour programs. This change will reduce the complexity of the R2T4 calculations and the inconsistency in the manner in which the calculation is done for clock-hour programs at different institutions.

Currently institutions implement complex sub-regulatory guidance to determine the number of days in the payment period for a program offered in modules, even if the student did not attend the module. These regulations will benefit institutions through the

[43] U.S. Bureau of Labor Statistics, *May 2023 National Industry-Specific Occupational Employment and Wage Estimates, Sector 61—Educational Services, https://www.bls.gov/oes/current/oes_nat.htm* (last modified Apr. 3, 2024).

[44] Based on internal data available to FSA.

requirement that the student actually attend the module for the days in the module to be included in the payment period. It will also eliminate the need for a ''freeze date,'' further reducing complexity.

Benefits to the Taxpayer

Overall, we believe that the more accurate calculations and reductions in complexity will benefit the taxpayer by reducing errors in R2T4 calculations, resulting in more accurate amounts being returned to the Department and further supporting the integrity of the title IV, HEA programs. R2T4 consistently ranks in the Top 10 compliance findings,[45] costing the Federal government time and money to provide assistance through training and conducting program reviews in an effort to identify and correct R2T4 errors committed by institutions. We believe the changes will also help alleviate some compliance issues related to R2T4.

5. Accounting Statement

As required by OMB Circular A–4, in the following table, the Department has prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides the best estimate of the changes in annual monetized benefits and costs of these final regulations.

TABLE 5.1—ACCOUNTING STATEMENT ANNUALIZED COSTS

	Annualized costs 2% discount rate
Reading and Understanding the New Rule	$1,120,398
Distance Education—Reporting and disclosure of information	1,097,755
R2T4—Student withdrawal	826,600
Total	3,044,753

6. Alternatives Considered

The Department considered the following items in response to public comments submitted on the NPRM. Many of these are also discussed in the preamble to these final regulations.

6.1 Distance Education

As already noted above, there were some requests for the Department to consider a limitation, such as a percentage of a program's length, on the amount of asynchronous coursework that could count toward clock hours required in clock-hour programs, but for the reasons we adduced above, we decided to not finalize this proposal instead.

6.2 R2T4

The Department received a significant number of comments expressing concern regarding the administrative burden associated with the entire proposal on R2T4. The Department considered all comments and decided against abandoning the proposal altogether. We did amend this final regulation to not finalize the attendance taking requirement for distance education programs, to provide more time to evaluate technological changes that can better track student engagement. This is explained in greater detail in the preamble.

Several commenters had concerns with the provision under (§ 668.22(l)(9) to consider a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module. Commentors stated that this change will make it easier to obtain and retain large amounts of student loans through minimal participation which will result in a gaming of the system. The Department considered the comments and ultimately determined that we do not believe that the change will result in a gaming of title IV, HEA aid. We believe the reduction in administrative burden created by this regulatory change will more than outweigh the potential for students to receive more federal student aid than they would have under the previous requirements. We note that students enrolled in modular programs still are required to comply with title IV requirements that are not impacted by this regulatory change such as mandatory Pell recalculations. Further, institutions may break up title IV disbursements into smaller increments (by module for example) to best meet the needs of the student, as long as the disbursement practices do not violate § 668.16(s).

During rulemaking the Department originally proposed to exempt confined or incarcerated individuals from R2T4 if the withdrawal were due to circumstances outside of their control, such as a prison-wide lock down. After further internal review, we determined that the Department does not have the authority under the HEA to exempt specific groups from R2T4. In the NPRM, we amended the proposal under § 668.22(d)(1)(vii) to provide more flexibility to postsecondary institutions in their leave of absence policies for confined or incarcerated individuals. Several commenters had concerns with this proposal. For example, one commenter stated that incarcerated students still may not be able to return within 180 days and would therefore need to be withdrawn in any event under the normal requirements for approved leaves of absence. Another commenter requested that the Department return to its original proposal of exempting confined or incarcerated students from R2T4. We again discussed the legality of exempting confined or incarcerated students from R2T4 and determined that we do not have that authority under the HEA.

6.3 TRIO

We considered expanding TRIO student eligibility to all five TRIO student support programs as requested by many commenters, but ultimately decided to not finalize the proposed TRIO provisions to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students.

7. Regulatory Flexibility Act

This section considers the effects that the final regulations may have on small entities in the educational sector as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The purpose of the RFA is to establish as a principle of regulation that agencies

[45] Annual Top Ten School Findings and School Fine Reports: *https://studentaid.gov/data-center/school/fines-and-findings.*

should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a ''significant impact on a substantial number of small entities.'' As noted in the RIA, the Department does not expect that the regulatory action will have a significant budgetary impact, but there are some costs to small institutions that are described in this Final Regulatory Flexibility Analysis.

Description of the Reasons for Agency Action

The Secretary is implementing final regulations to ensure students are well served by the institutions of higher education they attend and ensure that Federal Student Aid programs work in the best interests of students. New regulations for distance education will help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by requiring students' distance education enrollment status. The R2T4 final regulations will increase the accuracy and simplicity of performing R2T4 calculations, add additional clarity to institutions on reporting, and codify longstanding policies. The Department has also not finalized several proposals that were included in the NPRM related to distance education, R2T4, and TRIO. Not finalizing these provisions significantly reduces estimated burden on small institutions.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Through these final regulations, the Department aims to address inadequate protections for students to ensure the Federal Student Aid programs work to accomplish postsecondary access and completion. This includes ensuring the Department, students, and families have the information needed to answer important questions about enrollment in and success with distance education.

The Department's authority to issue these regulations stems primarily from multiple statutory enactments: first, 20 U.S.C. 1070–1099d (sections 400–499 of the HEA), which authorize the Federal government's major student financial aid programs; second, 20 U.S.C. 1070(b) (section 400(b) of the HEA), which outlines the Secretary's broad authority to carry out program requirements; third, the sections that govern the Department's oversight responsibility under title IV 20 U.S.C. 1099c, 1099c–1, 1099c–2 (sections 498, 498A, and 498B of the HEA); fourth, 20 U.S.C. 1001–1003, which established higher education definitions under the HEA; and fifth, 20 U.S.C. 1221e–3 and 1231a, which establish the general authority and responsibilities of the Secretary of Education.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

The SBA defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. All entities to which the Office of Postsecondary Education's regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for purposes of these final regulations, the Department continues to define ''small entities'' by reference to enrollment, as it has done in other rulemakings, to allow meaningful comparison of regulatory impact across all types of higher education institutions in the for-profit, non-profit, and public sectors.[46] The Department notes that enrollment and revenue are correlated for all IHES and that IHEs with higher enrollment tend to have the resources and infrastructure in place to more easily comply with the Department's regulations in general and these final regulations in particular. Since enrollment data are more readily available to the Department for all IHEs, the Department has used enrollment as the basis to identify small IHEs in prior rulemakings and continues to use enrollment to identify small IHEs in these final regulations. This approach also allows the Department to use the same metric to identify small IHEs across the for-profit, non-profit, and public sectors, and it treats public IHEs operated at the behest of jurisdictions with a population of more than 50,000 but with low enrollment as small, which the SBA's standard would not treat as small. Lastly, the North American Industry Classification System (NAICS), under which SBA's revenue standards in 13 CFR 121.201 are generally established, set different revenue thresholds for IHEs that provide different areas of instruction (*e.g.,* cosmetology, computer training, and similar programs) and there is no existing data that aligns those different revenue standards to the different types of regulated institutions. Similarly, where an institution provides instruction in several of these areas, it is unclear which revenue threshold to apply for purposes of the Department's RFA analysis.

As explained above, the enrollment-based size standard remains the most relevant standard for identifying all IHEs subject to these regulations. Therefore, instead of the SBA's revenue-based size standard, which applies only to proprietary IHEs, the Department has defined ''small IHE'' as (1) a less-than-two-year institution with an enrollment of fewer than 750 students, or (2) an at-least two-year but less-than-four-year institution, or a four-year institution, with enrollment of fewer than 1,000 students.[47] As a result of discussions with the SBA Office of Advocacy, this is an update from the standard used in some prior rules, such as the ''Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB),'' published in the **Federal Register** on May 19, 2023, 88 FR 32300, ''Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program, published in the **Federal Register** on July 10, 2023, 88 FR 43820, and the final regulations, ''Pell Grants

[46] For additional background on the Department's justification for using an enrollment-based size standard, see ''Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program'' proposed rule, published in the **Federal Register** on July 31, 2018, 83 FR 37242, and final rule, published in the **Federal Register** on September 23, 2019, 84 FR 49788; and ''Gainful Employment'' final rule published in the **Federal Register** on July 1, 2019, 84 FR 31392. The Department notes that the alternative size standards that are used in these final regulations are identical to the alternative size standards used in the GE regulations published in the **Federal Register** on October 10, 2023. *See* 88 FR 70175.

[47] In regulations prior to 2016, the Department categorized small businesses based on tax status. Those regulations defined ''nonprofit organizations'' as ''small organizations'' if they were independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organizations as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control,'' published in the **Federal Register** on October 28, 2022, 87 FR 65426. Those prior regulations applied an enrollment standard for a small two-year institution of less than 500 full-time-equivalent (FTE) students and for a small 4-year institution, less than 1,000 FTE students.[48] The Department consulted with the SBA Office of Advocacy on the alternative standard for this rulemaking. The Department continues to believe this approach most accurately reflects a common basis for determining size categories that is linked to the provision of educational services and that it captures a similar universe of small entities as the SBA's revenue standard.

We note that the Department's revised alternative size standard and the SBA's revenue standard identify a similar number of total proprietary IHEs, with greater than 93 percent agreement between the two standards. Using the Department's revised alternative size standard, approximately 61 percent of all IHEs would be classified as small for these purposes. Based on data from NCES, in 2022, small IHEs had an average enrollment of approximately 289 students. In contrast, all other IHEs had an average enrollment of approximately 5,509 students.

TABLE 1—NUMBER OF SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

	Small	Total	Percent
Proprietary	2,072	2,285	91
2-year	1,835	1,951	94
4-year	237	334	71
Private not-for-profit	990	1,818	54
2-year	180	187	96
4-year	810	1,631	50
Public	535	1,933	28
2-year	453	1,128	40
4-year	82	805	10
Total	3,597	6,036	60

Source: 2022 IPEDS data reported to the Department.

In addition, the following tables show the breakdown of this 93 percent agreement, using institutional-level data relating to the 2,285 private for-profit IHEs that were identified using 2022 IPEDS data.[49] The enrollment size standard identifies 2,072 for-profit IHEs as small, and the revenue size standard identifies 2,043 for-profit IHEs as small, with a core of the same 1,917 for-profit IHEs identified as small under both standards. There are 156 IHEs that are only identified as small under the enrollment standard and 126 IHEs that are only identified as small under the revenue standard. Below are descriptive statistics of those for-profit IHEs identified as small by only one of the measures.

Table 2 shows the distribution of revenues and the average enrollments of the 156 for-profit IHEs identified as small under only the enrollment size standard. A large majority of these for-profit IHEs do not have revenue data available in IPEDS. The average enrollment for this group with no revenue data available is 210 students.

TABLE 2—SMALL IHES UNDER ENROLLMENT SIZE STANDARD ONLY

Revenue category	Number of IHEs	Average enrollment
No Data	149	210
$35–40 million	4	580
$41–55 million	2	696
Above $55 million	1	320
Total	156	226

Table 3 shows the distribution of enrollments and the average revenues of the 127 for-profit IHEs identified as small under only the revenue size standard. Six of these 127 IHEs do not have enrollment data available through IPEDS. There are 57 IHEs in the bin of ''1,000–1,249 students'', which is closest to the enrollment threshold for for-profits, and average revenue for these IHEs is $13.3 million. To the extent that the final alternative size standard covers for-profit IHEs that would not otherwise be covered (and the revenue standard covers for-profit IHEs that would not be covered by the enrollment standard), the Department treats certain for-profit IHEs as small and others as not small because of the reasons for proposing an alternative size standard explained in this section above.

[48] In those prior rules, at least two-year but less-than-four-years institutions were considered in the broader two-year category. In this proposed rule, after consulting with the SBA Office of Advocacy, we separate this group into its own category. Based on this consultation, we have also increased the enrollment threshold for less-than-two-year institutions from 500 to 750 in order to treat a similar number of institutions as small under the alternative enrollment standard as would be captured under a revenue standard.

[49] 2022 IPEDS downloaded from *https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx.*

TABLE 3—SMALL IHES UNDER REVENUE SIZE STANDARD ONLY

Enrollment category	Number of IHEs	Average revenue
No Data	6	$ 1,206,508
1,000–1,249 students	57	13,269,753
1,250–1,499 students	23	19,122,831
1,500–1,749 students	13	19,247,730
1,750–1,999 students	14	23,287,464
Above 2,000 students	14	23,527,952
Total	127	16,606,901

Tables 4 and 5 show the distribution of institution levels for for-profit IHEs identified as small by the enrollment size standard only and by the revenue size standard only, respectively.

TABLE 4—LEVEL OF FOR-PROFIT IHES IDENTIFIED AS SMALL UNDER THE ENROLLMENT SIZE STANDARD ONLY

Level	Number of IHEs
Less than 2 years (below associate)	73
At least 2 but less than 4 years	45
Four or more years	38
Total	156

TABLE 5—LEVEL OF FOR-PROFIT IHES IDENTIFIED AS SMALL UNDER THE REVENUE SIZE STANDARD ONLY

Level	Number of IHEs
Less than 2 years (below associate)	50
At least 2 but less than 4 years	47
Four or more years	29
Total	126

Notably, the five states with the most IHEs that are identified as small under only the enrollment standard are California (34), Texas (15), Florida (13), New Jersey (7), and Puerto Rico (7). The five states with the most IHEs that are identified as small under only the revenue standard are California (28), Florida (18), Texas (11), Arizona (8), and Illinois (6).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Based on the model described in the discussion of RIA, an IHE will see a minimum net increase in costs of approximately $4,729 in year 1 for all IHEs, as explained in more detail in the 4.B. COSTS OF THE FINAL REGULATIONS section of this Regulatory Impact Analysis and included in the table below. We note that all these amounts are reduced from the NPRM due to the decision not to finalize several provisions.

TABLE 6—ESTIMATED NET INCREASE IN COSTS

Category	Year 1	
Reading and Understanding the New Rule	$1,740	Total cost of $10,265,351 divided by the total institutions.
Distance Education—Reporting and Disclosure of Information	1,705	Total cost of $10,057,889 divided by the total institutions.
Return of Title IV Funds When a Student Withdraws	1,284	Total cost of $7,573,504 divided by the total institutions.
Total	4,729	

For purposes of assessing the impacts on small entities, the Department defines a ''small IHE'' as a less than two-year IHE with an enrollment of less than 750 FTE and two-year or four-year IHEs with an enrollment of less than 1,000 FTE, based on official 2022 FTE enrollment. According to data from the IPEDS, in FY 2022, small IHEs had, on average, total revenues of approximately $8,691,634.[50] Therefore, the Department estimates that the regulations will generate a net cost for small IHEs equal to approximately 0.5 percent of annual revenue.

[50] Based on data reported for FY 2022 for ''total revenue and other additions'' for public institutions and ''total revenues and investment return'' for private not-for-profit and private for-profit institutions.

TABLE 7—ESTIMATED NET INCREASE IN COSTS

Entities by sector	Number of institutions	Average total revenue	Net cost percentage
Private for-profit, 2-year	473	$4,923,011	0.09
Private for-profit, 4-year or above	237	9,204,127	0.05
Private for-profit, less-than 2-year	1362	1,845,117	0.3
Private not-for-profit, 2-year	123	3,810,573	0.1
Private not-for-profit, 4-year or above	810	13,268,232	0.03
Private not-for-profit, less-than 2-year	57	2,030,589	0.2
Public, 2-year	234	14,804,670	0.03
Public, 4-year or above	82	26,692,438	0.02
Public, less-than 2-year	219	3,477,191	0.1
Grand Total	3,597	6,792,743	0.07

According to data from IPEDS, approximately 371 small IHEs had total reported annual revenues of less than $472,900 for which the costs estimated above will potentially exceed 1 percent of total revenues. The average enrollment across these 371 small IHEs was 46 students.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The regulations will not conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described in section 5 of the RIA above, in ''Alternatives Considered'', the Department considered several alternative provisions and approaches but rejected those alternatives for the reasons considered above. Most relevant to small entities were the alternatives to limit regulatory changes. For example, under R2T4, the Department proposed removing the 49 percent withdrawal exemption, which would in part eliminate observed confusion between this figure and the 60 percent completion requirement under the R2T4 calculation and eliminate the continued need for significant guidance and training on how to determine whether a student qualifies for the exemption, thereby reducing institutional burden. Negotiators disagreed, however, stating that institutions had already updated systems and policies to account for the exemption and that it was serving students well. As a result, the Department eliminated the proposal.

IX. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

With the decision to not finalize the proposed amendments to the Federal TRIO programs and the proposal for institutions to take attendance in their distance education courses from these final regulations, we have determined that there are no new PRA implications for those provisions.

Section 668.41 contains information collection requirements. Under the PRA, the Department has or will at the required time submit a copy of this section and Information Collection request to OMB for its review. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In these final regulations, we display the control numbers assigned by OMB to any information collection requirements proposed in the NPRM and adopted in these final regulations.

Section 668.22 Treatment of Title IV Funds When a Student Withdraws

As described in the preamble, § 668.22(b)(3)(ii) is not being finalized. There is no longer any burden associated with this regulation. The burden for the information collection 1845–0022 will not be changed based on these final regulations.

Section 668.41 Reporting and Disclosure of Information

Requirements: The Department added a new paragraph § 668.41(h) that requires institutions to report their enrollment in distance education or correspondence courses. The Department expects that this provision will be implemented July 1, 2027. This change will provide the Department with expanded information to better answer questions about college access, persistence, and success, and to better inform student-centered policies. This reporting requirement also improves the Department's ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment. When institutions enroll at least 50 percent of their students in distance education, offer at least 50 percent of their courses, or 50 percent of a program via distance education, they must obtain further accreditor approval beyond the initial approval to deliver distance education programs.

Burden Hours: The final regulatory change adds burden for institutions. Because we expect to delay implementation of this new requirement until July 1, 2027, we are not estimating the burden for implementation of these regulations at this time. As development of the reporting mechanism progresses, a separate information collection will be submitted for full public comment closer to implementation of the data collection, incorporating more useful and specific information.

Consistent with the discussions above, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the

information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For institutions the Department is using the median hourly wage for Education Administrators, Postsecondary, $49.33 per hour according to BLS. *https://www.bls.gov/oes/current/oes119033.htm.*

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated cost $49.33 per entity
§ 668.41	The Department adds a new paragraph (h) that requires institutions to report their enrollment in distance education or correspondence courses. The Department plans to implement this provision July 1, 2027.	None—will develop closer to implementation.	

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of final Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These final regulations do not have Federalism implications.

Accessible Format: On request to one of the program contact persons listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Parts 643 and 644

Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 645

Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Veterans.

34 CFR Parts 647

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 600, 643, 644, 645, 647, and 668 of title 34 of the *Code of Federal Regulations* as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Amend § 600.2 by adding, in alphabetical order, a definition of ''*Distance education course*'' to read as follows:

§ 600.2 Definitions.

* * * * *

Distance education course: A course in which instruction takes place exclusively as described in the definition of *distance education* in this section notwithstanding in-person non-instructional requirements, including orientation, testing, and academic support services.

* * * * *

PART 643—TALENT SEARCH

■ 3. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 4. Amend § 643.3 by revising paragraphs (a)(1)(iv) and (v) to read as follows:

§ 643.3 Who is eligible to participate in a project?

(a) * * *
(1) * * *
(iv) Is a permanent resident of Guam, or the Northern Mariana Islands; or
(v) Is a resident of the Freely Associated States—the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 5. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 6. Amend § 644.3 by revising paragraphs (a)(1)(iv) and (v) to read as follows:

§ 644.3 Who is eligible to participate in a project?

(a) * * *
(1) * * *
(iv) Is a permanent resident of Guam, or the Northern Mariana Islands; or
(v) Is a resident of the Freely Associated States—the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 7. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 8. Amend § 645.3 by:
■ a. Removing the periods at the end of paragraphs (a)(1) through (3) and adding, in each place, ''; or''.
■ b. Revising paragraph (a)(4).
The revision reads as follows:

§ 645.3 Who is eligible to participate in an Upward Bound project?

* * * * *

(a) * * *
(4) Is a permanent resident of Guam, or the Northern Mariana Islands; or

* * * * *

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

■ 9. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

■ 10. Amend § 647.3 by revising paragraph (a)(4) to read as follows:

§ 647.3 Who is eligible to participate in a McNair project?

* * * * *

(a) * * *
(4) Is a permanent resident of Guam, or the Northern Mariana Islands; or

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 11. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c-1, 1221e-3, and 1231a, unless otherwise noted.

■ 12. Amend § 668.22 by:
■ a. Removing ''and'' at the end of paragraph (a)(2)(ii)(A)(*4*).
■ b. Removing the period at the end of paragraph (a)(2)(ii)(A)(*5*) and adding, in its place, ''; and''.
■ c. Adding new paragraph (a)(2)(ii)(A)*(6)*.
■ d. Revising paragraph (b)(2).
■ e. Revising paragraphs (d)(1)(vii) and (f)(1)(ii)(A).
■ f. Revising paragraph (l)(9).
The revisions and addition read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) * * *
(2) * * *
(ii) * * *
(A) * * *
(6) A student is not considered to have withdrawn if—
(i) The institution's records treat a student as having never attended courses for that payment period or period of enrollment;
(ii) The institution returns all the title IV grant or loan assistance, including all title IV credit balances provided to the student or parent, that were disbursed for that payment period or period of enrollment;
(iii) The institution refunds all institutional charges to the student for the payment period or period of enrollment; and
(iv) The institution writes off or cancels any payment period or period of enrollment balance owed by the student to the institution due to the institution's returning of title IV funds to the Department.

* * * * *

(b) * * *

(2) An institution must, within 14 days of a student's last date of attendance, document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew.

* * * * *

(d) * * *

(1) * * *

(vii) Except for a clock-hour or non-term credit hour program, a subscription-based program, or an eligible prison education program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed since the student began attendance in the payment period or period of enrollment as of the student's withdrawal date.

* * * * *

(l) * * *

(9) A student in a program offered in modules is scheduled to complete the days in a module only when a student begins attendance in the module.

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■ 13. Amend § 668.41 by adding paragraph (h) to read as follows:

§ 668.41 Reporting and disclosure of information.

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(h) *Reporting of student enrollment in distance education or correspondence courses.* For each recipient of title IV, HEA assistance at the institution, the institution must report to the Secretary, in accordance with procedures established by the Secretary, the recipient's enrollment in distance education or correspondence courses.

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