

Proposed Rules on Distance Learning and Innovation Published

The Department of Education has published [proposed rules](#) that are intended to facilitate distance learning and educational innovation. Public comments on the notice of proposed rulemaking (NPRM) are due on May 4, 2020, and can be submitted electronically via the [Federal eRulemaking Portal](#).

The NPRM is the result of months of [negotiated rulemaking](#) in which a broad array of higher education stakeholders debated a massive package of Title IV regulatory changes sought by the Department. Because negotiators reached consensus, the Department is now bound to publish proposed rules that are based on the agreed-upon regulatory language.

The NPRM would amend current regulations in order to reduce barriers that institutions may face when providing distance education or developing innovative new types of programs or methods of institutional delivery. In some cases, current regulations do not directly address the conditions under which non-traditional programs, such as distance learning, direct assessment, or competency-based education, qualify for Title IV assistance. The NPRM is intended to clarify these rules and encourage new and innovative forms of instruction.

Many of the changes in the NPRM are highly technical in nature. Key provisions in the NPRM would:

- Require the Secretary of Education's approval of an institution's first direct assessment program at each credential level, but allow institutions to add a second or subsequent direct assessment program without approval, so long as the change is reported to the Secretary;
- Allow students enrolled in eligible foreign institutions to complete up to 25 percent of an eligible program at an eligible institution in the United States;
- Clarify the conditions under which a foreign school may enter into a written arrangement with a non-Title IV eligible entity;
- Require the Secretary to rely on requirements established by accreditors or state agencies when evaluating an institution's appeal of a final audit or program review finding related to an institution's assignment of credit hours or classification of a course as distance education;
- Require the Department to act promptly on an institution's application to become a qualified eligible institution;
- Prohibit an institution from being deemed financially responsible if an individual who exercises substantial ownership or control also exercised substantial ownership or control over another institution that closed precipitously;
- Allow institutions using written arrangements to modify their curriculum at the recommendation of industry advisory boards or faculty review committees;
- Clarify rules related to disbursement and return of Title IV funds for non-traditional programs;
- Clarify satisfactory academic progress requirements for non-traditional programs; and
- Clarify or add definitions related to correspondence courses, distance education, subscription-based programs, credit hour, clock hour, and regular and substantive interaction.

This NPRM is the third and final set of rules that emerged from negotiated rulemaking. The [first set of regulations](#) on [accreditation and state authorization](#) were finalized in November and will become effective on July 1, 2020. The [second set of rules](#) on [TEACH Grants and faith-based institutions](#) were published as proposed regulations in December.

Because NAICU participated in the negotiated rulemaking process, and, in keeping with negotiator protocols, NAICU does not intend to submit comments on the NPRM.

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