

August 23, 2024

The Honorable Miguel A. Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

**Re: Comments of Career Education Colleges and Universities Regarding the Proposed Regulations on Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs [Docket ED-2024-OPE-0050]**

Dear Secretary Cardona:

On behalf of Career Education Colleges and Universities (“CECU”), we submit the following comments in response to the above-referenced Notice of Proposed Rulemaking (the “NPRM” or the “Proposed Rule”) published in the July 24, 2024 Federal Register (89 Fed. Reg. 60256) by the United States Department of Education (the “Department”).

CECU is a national trade organization with a membership of more than 750 accredited, postsecondary educational institutions throughout the United States, most of which participate in the Federal student financial assistance programs. Our primary interest is the well-being of our nation’s students and their preparation for productive careers. As noted in our comments, CECU generally supports well-reasoned regulations that protect students and taxpayers and respect institutional missions. Our comments highlight various concerns and offer recommendations for improvement. We present our comments in the order that the issues appear in the NPRM, referring in each instance to the relevant sections and paragraphs of the proposed regulations being addressed.

## **I. DISTANCE EDUCATION**

### **A. We oppose the change to the definition of “additional location” because the proposed text does not match the Department’s stated purposes for the amendment or the described impact of the proposed text in the context of other regulations (34 CFR § 600.2).**

The Department proposes adding a third paragraph to the definition of “additional location” that describes a “virtual location.” In the NPRM the Department discusses how this change would create a “virtual location” at an institution housing all programs that the institution offers exclusively through distance education (ignoring any required on-campus/residential component of the program that lasts less than 90 days) and only those programs. However, the proposed language does not state that an institution must house all such programs at its “virtual location,” nor does it state that an institution cannot house other programs at the “virtual location.” Furthermore, once the proposed language is added to the definition of “additional location,” it will be unclear how the new paragraph (3) interacts with the existing regulatory text in paragraphs (1) and (2). For example, the fact that the statement that “[a]n additional location participates in the title IV, HEA programs only through the certification of the main campus” is found in paragraph (1) would appear to suggest that the statement only

applies to normal additional locations described in paragraph (1) and not to “virtual locations” described in paragraph (3), but the statement is sufficiently broad that it would otherwise appear to apply to the new text in paragraph (3) if it were not located in paragraph (1). Likewise, the new version of the regulation would leave readers wondering how the new paragraph (3) interacts with the existing paragraph (2) when addressing students who are participating in programs offered fully via distance education while the student lives at a Federal penitentiary or another similar location. At a minimum, the Department should amend the proposed language in order to clearly track the Department’s description of its intended impact and to clarify its interaction with the existing text in the definition of “additional location.”

In addition, the text and placement of the proposed amendment does not match the Department’s stated goals for the proposed amendment. For example, the Department states that proposed amendment will apply close-out requirements such as the closed school discharge regulations to situations where an institution either ends all of its distance education programs while keeping in place some of its non-distance education programs (or vice versa). However, Section 600.2 states that the definitions contained therein apply to the regulations in Part 600 of Title 34 of the Code of Federal Regulations, which does not include the closed school discharge provisions found in 34 CFR § 685.214. And although the definition of “additional location” found in Section 600.2 is also expressly applied to some regulations outside of Part 600, such as the regulations found in Part 602, it does not appear that the definition of “additional location” applies to Section 685.214 (perhaps because Section 685.214 refers to “locations” rather than “additional locations”).

Rather than amending Section 685.214 in order to accomplish this goal, the Department proposes amending the definition of “additional location” in Section 600.2. This means that the new definition including the concept of a “virtual location” will apply in every instance where the term “additional location” is used in the regulations, including not only the existing regulations in Part 600 (such as Sections 600.9, 600.10, 600.20, 600.21, 600.31, 600.32, 600.54) but also the existing regulations in Part 602 (such as Sections 602.11, 602.20, 602.22, and 602.24) and Subpart P of Part 668 (such as Sections 668.237, 668.238, and 668.241). And it is unclear whether the new definition will also apply in some or all of the more than 100 instances in the Department’s regulations that mention a “location” rather than an “additional location” since those are often interpreted as references to “additional locations” (as demonstrated by the Department’s reasoning regarding the closed school discharge provisions).

If the Department wants the closed school discharge provisions to apply when an institution closes all of its distance education programs, the Department should amend Section 685.214. Likewise, if the Department wants to distinguish fully-online programs from their non-online counterparts when collecting information, the Department should amend its rules and procedures governing the collection of such information. Instead, the Department chooses to amend the definition of a term that appears in dozens or even hundreds of different places in the regulatory text, including the regulations that govern accreditation and State authorization. The Department does state in the NPRM that “the proposed concept of a virtual additional location would not require additional oversight by States or accrediting agencies; instead, the Department would approve an institution’s virtual locations if its oversight entities approved or authorized the institution to offer distance education.” However, the Department does not include this statement in the regulatory text, and by making its proposed amendment in the definition of “additional location” it necessarily amends the meaning of that term in all other locations in the regulations, including the State authorization and accreditation regulations.

The Department’s decision to propose an amendment to the definition of “additional location” and then only discuss its application in the closed school discharge context (without considering and discussing all of the

other places in the regulations where this new definition will apply) is illogical and unjustifiable. We strongly urge the Department not to include this ill-considered amendment in the final rule.

**B. We oppose the Department’s proposal to eliminate asynchronous learning from clock-hour programs (34 CFR § 600.2 and 34 CFR § 668.3(b)(2)(ii)).**

The Department proposes amending the definition of “clock hour” to remove any allowance for asynchronous education, even when asynchronous learning activities are conducted via technology that can monitor and document the time that students spend participating in the activity. The Department argues that asynchronous learning should be disallowed in clock hour programs because is less effective than synchronous learning. However, the only study cited in support of this argument (the Yadav study, cited five times in the NPRM) is deeply flawed and does not actually support the argument.<sup>1</sup>

For example, most of the findings included in the Yadav study and cited by the Department were based on student opinion surveys rather than learning outcomes. None of the student opinion findings support the Department’s argument that synchronous education is more effective than asynchronous education unless we assume that students are always correct about which method of instruction is most effective.

In addition, from the description of the methodology in the study, it appears that the authors assigned different subjects to the different modalities, so some topics were taught synchronously and some were taught asynchronously.<sup>2</sup> The only attempt to actually make the asynchronous and synchronous teaching comparable was stratification by difficulty of topic, which means that any difference in outcomes between the topics taught synchronously and asynchronously could be the result of differences between the topics themselves or other differences in the way they were taught or tested. There is no reason to think that any differences in the test outcomes for the different topics were solely the result of the asynchronous vs. synchronous modality of instruction. As a result, the outcomes from the two categories are not comparable in a way that would support the study’s conclusion on outcomes or the Department’s argument.

And the single finding mentioned in the study and cited by the Department that *was* based on learning outcomes was only mentioned briefly in the study without any additional explanation or detail.<sup>3</sup> The study did not provide the individual test results at the student level or even the average test results for each test or for each student, nor did the study discuss or provide any detail on the type of statistical analysis used to combine and analyze those test results into the top-level finding; instead the study merely provided a measure of the average test score (and the associated variance) for the tests on the asynchronous module and the synchronous module, along with the p value for the conclusion.<sup>4</sup>

Also, the authors did not address possible alternate explanations for the outcome data. The only outcome measured appears to have been the student’s test score after completion of the module; this measure does not

<sup>1</sup> [https://journals.lww.com/jehp/fulltext/2021/10000/why\\_people\\_are\\_becoming\\_addicted\\_to\\_social\\_media\\_.223.aspx](https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_.223.aspx).

<sup>2</sup> *Id.* (“Two modules of online teaching, i.e., asynchronous and synchronous, were designed by the teaching faculty for the subject of biomedical statistics. The topics to be covered were stratified on the basis of their difficulty level and then randomized into the two modules by the faculty.”).

<sup>3</sup> *Id.* (“For the topics covered through synchronous module, the average score was  $25.3 \pm 9.8$  while that for the topics taught through asynchronous module was  $19.4 \pm 8.5$ . The difference between the two was statistically significant ( $P = 0.0156$ ).”).

<sup>4</sup> Nor can the type of statistical test used be inferred from the information provided. When the most obvious basic statistical test to apply in this kind of situation—a t-test—is applied to the summary statistics provided in the study it would only yield the p value provided in the study if the degrees of freedom used in the analysis were 22, which does not match up with the description of the study design.

take into account students' initial knowledge in each subject via a pretest, different students having different aptitudes for different topics, or the sequencing effects from the order of the topics and the way issues addressed under one topic provide a foundation for learning in future topics. And the authors stated that while they measured participation in the synchronous education module they did not measure participation in the asynchronous education module.<sup>5</sup> Any of these differences could have explained part or all of the difference in the average test results for the synchronous and asynchronous modules, instead of the difference in teaching modality.

Finally, the subject of the class in the study (biomedical statistics) is the kind of material taught didactically in traditional credit hour programs rather than the hands-on or applied kind of training traditionally associated with clock-hour programs, so there is no reason to think that any conclusion from the study would be more applicable to clock-hour programs than credit-hour programs, as the authors themselves recognized.<sup>6</sup>

Taken together, these flaws demonstrate that the study provides an insufficient basis for the conclusion that asynchronous education is less effective than synchronous education.

Furthermore, even setting aside the flaws of the specific study cited by the Department, the Department's reliance on that single study alone to support their conclusion ignores the significant body of research comparing asynchronous and synchronous education which has *not* concluded that asynchronous education is inferior to synchronous education. For example, many studies have found no statistically significant difference between the effectiveness of asynchronous and synchronous education.<sup>7</sup> And other studies have concluded that the two teaching modalities have different strengths and weaknesses and are therefore complementary.<sup>8</sup> Thus, the Department's argument that asynchronous learning should be prohibited because it is less effective than synchronous learning is invalid because it ignores almost all of the literature on the subject.

<sup>5</sup> *Id.* ("The average attendance for the synchronous module lectures was 92.9% and that for online examinations was 90.6%. Since the asynchronous lectures were shared on WhatsApp, attendance for the lectures was not calculated.")

<sup>6</sup> *Id.* ("Due to the sudden lockdown in the wake of ongoing pandemic, evaluation of teaching involving skill acquisition could not be undertaken for these students. ... There is a need of examining the utility of these methods of online teaching in laboratory skill acquisition by such students as well and this may require innovative methods to be employed during online training.")

<sup>7</sup> See, e.g., <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10960437/> ("Satisfaction levels, rated on a scale of 0–5, were generally high for both teaching methods, with no significant differences observed (4.6 for synchronous, 4.53 for asynchronous;  $p = .350$ ."); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6477961/> ("After the intervention, posttest mean scores improved significantly ( $P < 0.001$ ) within each group, for both the groups, but there was no significant difference in posttest scores on intergroup comparison ( $P = 0.507$ ."); [https://www.scielo.org.mx/scielo.php?pid=S2306-41022023000200071&script=sci\\_arttext&tlng=en](https://www.scielo.org.mx/scielo.php?pid=S2306-41022023000200071&script=sci_arttext&tlng=en) ("there appears to be no difference in participant learning with synchronous or asynchronous faculty support during an online, asynchronous course. Asynchronous activities appear to be effective teaching methods and should be considered in continuous medical education in orthopedics.").

<sup>8</sup> [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](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); see also <https://www.sajournalofeducation.co.za/index.php/saje/article/view/1383/868> ("The study revealed that both synchronous and asynchronous e-learning significantly increased students' achievement and skills acquisition in word processing irrespective of the gender of the students. However, students taught through the asynchronous mode displayed higher cognitive achievement while those taught through the synchronous e-learning mode displayed improved skills acquisition."); <https://formative.jmir.org/2022/11/e38862> ("We found that in the asynchronous modality, there was a higher number of visualizations, while in the synchronous modality, there were more posts and interactions between educators and users"); <https://link.springer.com/article/10.1186/s12909-024-05171-1> ("The integration of synchronous teaching and asynchronous teaching can provide complementary advantages and improve the effectiveness of online teaching.").

And this unjustified amendment will cause significant harm to students, especially non-traditional students who are looking to improve their socioeconomic status by acquiring valuable skills via programs that are sufficiently flexible that they can complete their training while maintaining other commitments to family or community. As a result, we strongly encourage the Department to remove this proposed amendment from the final version of the rule.

**C. We oppose the addition of a reporting requirement for enrollment in distance education courses (34 CFR § 668.41(h)).**

CECU feels strongly that the Department should rely on accurate and relevant data in making its policy decisions, and it is true that gathering more data relative to distance education would make it more likely that the Department would take that approach when formulating policies about distance education. However, the proposed language gives little or no detail about how the new reporting requirement would be implemented. Given the indications during negotiated rulemaking and in the NPRM itself that the Department is interested in a broad range of data related to distance education, it is likely that this proposed language will ultimately result in a much larger burden on schools than even is estimated in the NPRM. CECU's conversations with schools have indicated that it would be a significant additional burden if the proposed amendment is implemented in a way that requires reporting at the individual student level. And not only would reporting involving the identification of individual students increase the burden on schools, but such a requirement could potentially run afoul of the statutory prohibition on the creation of any new database of student information, as set forth in 20 USC 1015c. As a result, CECU believes the costs of the new requirement will outweigh its benefits.

**II. RETURN OF TITLE IV FUNDS (R2T4)**

**A. We oppose the Department's proposal to require documentation of a student's withdrawal date within 14 days of the last date of attendance (34 CFR § 668.22(b)(2)).**

For programs where the institution is required to take attendance (including now all distance education courses) this proposed amendment would effectively require an institution to consider a student to be withdrawn any time that student goes 14 days without attendance. The Department does state in the NPRM that the amendment is merely intended to codify longstanding sub-regulatory guidance requiring that institutions determine the date that a student withdrew within 14 days of the last date of attendance, which can be found in the Federal Student Aid Handbook. However, in addition to the statement that "the date of the institution's determination that the student withdrew should be no later than 14 days ... after the student's last date of attendance," the sub-regulatory guidance also includes a second statement that "[t]he school is NOT required to administratively withdraw a student who has been absent for 14 days." This second statement was likely included because the obvious inference from the first statement is that schools must automatically withdraw a student that doesn't attend for 14 days; otherwise the school would risk violating the rule in the first statement if the student ends up withdrawing without returning to attendance. In contrast to the guidance, the proposed regulatory language does not include that statement, so the inference from the first statement stands un rebutted. In addition, the guidance includes an explicit exception for "unusual" instances along with a description of the kinds of circumstances that would count as "unusual." In contrast, the proposed regulatory language includes no such exception. If the Department intends to merely codify existing sub-regulatory guidance, the Department should include both of these relevant and important additional statements from the sub-regulatory guidance in the proposed regulatory language. Otherwise the Department will be imposing a new version of the requirement, based solely on the single requirement stated (without caveat or exception) in the current version of the proposed language.

This requirement will create additional burdens for institutions and students alike, whether in the form of erroneous withdrawal actions or in the form of additional paperwork to process formal leaves of absence to avoid an erroneous withdrawal. And these burdens will fall especially hard on students facing unusual or challenging life circumstances including temporary military duty or certain kinds of health issues. The Department should instead either not impose the 14-day requirement or consider alternatives involving a longer time period than 14 days or a more flexible way for institutions to allow and document exceptions.

**B. We oppose the proposed attendance-taking requirement for distance education courses (34 CFR § 668.22(b)(3)(ii))**

The Department jumps from the premise that institutions already take attendance for many if not most distance education courses to the conclusion that all institutions should be required to take attendance for all distance education courses without providing any justification. The Department likewise concludes in the same breath that the burden from this new requirement will be relatively small. On the contrary, based on our conversations with schools we believe that the burden will be significant. The Department's asserted benefit of improving R2T4 calculations is insufficient to justify the burdens associated with such a sweeping requirement. We therefore encourage the Department to remove the distance education attendance-taking requirement from the final rule.

With significant revision, we believe the Department could promulgate a much-improved final rule that would improve the regulations on distance education. Absent such revision, we anticipate that the proposed regulations would fail to serve the best interests of students, institutions, and taxpayers.

We appreciate the opportunity to comment on these proposed regulations and your careful consideration of the issues raised in the attached comments. If you require any additional information or further clarification, please contact Jed Brinton, Senior Vice President and General Counsel, at [Jed.Brinton@career.org](mailto:Jed.Brinton@career.org) or 571-800-6524.

Sincerely,

A handwritten signature in black ink that reads "Jason Altmire". The signature is written in a cursive, flowing style.

Jason Altmire, DBA  
President and CEO