



ASSOCIATION OF
PUBLIC &
LAND-GRANT
UNIVERSITIES

To: APLU Council on Governmental Affairs
 From: APLU Office of Governmental Affairs
 Date: April 17, 2024
 Re: **Update and Request for Feedback on Negotiated Rulemaking on Program Integrity and Institutional Quality**

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OVERVIEW

On March 7, the Department of Education (ED) concluded its third and final week of [negotiated rulemaking \(negreg\) on Program Integrity and Institutional Quality](#), including State Authorization, Distance Education, Accreditation, Cash Management, Return to Title IV, and TRIO.

As the committee failed to reach consensus on all issues except TRIO, ED will now produce proposed regulations and publish for public comment.

This memo provides an update on each topic, the status of negotiations as they concluded, and requests for APLU member input. Because these are complex issues, these summaries do not detail all areas that may be of interest to APLU members.

While ED prepares a Notice of Proposed Rulemaking with its proposed regulations, APLU is considering our engagement with the administration based on concerns we hear from our membership. We encourage responses to the questions below by EOD Friday, April 26. Please share your responses with [Jonathan Elkin](#) and [MacGregor Obergfell](#).

Key resource: [ED Negreg Site](#)

1. STATE AUTHORIZATION

APLU Staff Lead: MacGregor Obergfell | Latest issue paper [PDF](#)

ED proposed significant changes to state authorization that would weaken the State Authorization Reciprocity Agreement and make it much more likely institutions would need to comply with a multitude of state statutes in order to offer distance education to students in other states.

In order to participate in Title IV financial aid programs, institutions must be accredited by a recognized agency, enter into a program participation agreement with the Department of Education, and be authorized by their state to operate. To facilitate online education across state lines, states voluntarily entered into reciprocity agreements. These state authorization reciprocity agreements (SARA) set uniform broadly-applicable consumer protection standards. Entrance into a reciprocity agreement enables the institution to offer online programs in all states that participate in the agreement. For example, the National Council for State Authorization Reciprocity Agreements (NC-SARA) includes 49 states and over 2,000 institutions, enabling participating states to offer online education in other member states.

ED proposed several changes to state authorization regulations, though the committee did not reach consensus. Of great concern to APLU is a proposal to require institutions to receive authorization from each state in which the institution enrolls at least 500 students in online courses. This proposal would set an arbitrary threshold leading to negation of the reciprocity agreements states voluntarily join to facilitate online education across state lines.

ED further proposed allowing states to enforce their own education-specific consumer protection laws and requiring SARAs to provide processes for states to change the terms of the agreement. APLU is concerned both of these proposals would limit state autonomy to willingly choose to participate in SARA.

Other proposals would limit participation on SARA governing boards to state employees and members of the public, prohibiting institutional representatives from participating, and creating a system to allow states to investigate complaints offered by resident students enrolled in online courses.

APLU QUESTIONS FOR CONSIDERATION:

- Does your institution enroll more than 500 students online in any state other than your own? How might your institution's online offerings change if it were required to receive authorization from each state in which more than 500 students were enrolled?
- Please describe the resources that would be required to comply with the regulations and the impact on the institution and its support for students.
- How has participation in state authorization reciprocity agreements enabled your institution to offer or expand online programs?
- How might permitting states to enforce their own education-specific consumer protection laws and suggest changes to reciprocity agreements impact your institution's decision to continue offering/expanding online offerings?
- Does your institution have concerns over the proposal to limit SARA governing board representative to only state employees and members of the public?

2. DISTANCE EDUCATION

APLU Staff Lead: MacGregor Obergfell | Latest issue paper [PDF](#)

The Department of Education proposed eliminating asynchronous learning from counting towards total hours for clock hour programs. ED also proposed creating a separate "virtual location" for institutional reporting purposes in order to identify students enrolled only in online programs. Currently, ED is unable to distinguish enrollment and outcomes results between on campus and distance programs with the same Classification of Instructional Programs (CIP) code. Under the proposal, students enrolled only in online programs would be reported through the institution's "virtual location" and would be differentiated from students enrolled in in-person programs, allowing ED to disaggregate outcomes by on-campus and distance status.

APLU QUESTIONS FOR CONSIDERATION:

- If your institution offers clock hour programs, does your institution include asynchronous learning in those programs? If so, does your institution utilize software to monitor asynchronous activity?
- How would the inability to include asynchronous offerings affect your institution's ability to continue offering these programs to Title IV recipients?
- Does your institution have concerns regarding a separate virtual entity for reporting online enrollments?

3. ACCREDITATION ISSUES

APLU Staff Lead: MacGregor Obergfell | Latest issue paper [PDF](#)

The Department of Education proposed extensive revisions to accreditation regulations implemented by the Trump Administration, totaling nearly 70 pages of redline text. Many of the proposed changes would not impact public research universities. Details of proposals that may impact public research universities follow.

Under current regulations, an accrediting agency is required to maintain “substantive change” policies to ensure certain changes in institutional offerings do not adversely affect the institution’s ability to meet the accreditor’s standards for recognition. ED proposes to expand the definition of “substantive change” to include when “at least 50 percent of the institution’s students are enrolled in at least one course offered through distance education.” Such changes in an institution’s enrollment patterns would trigger an institutional review under the accreditor’s substantive change policy.

The proposal requires accrediting agencies to set “minimum expectations for performance” on student achievement based on the institution’s mission, though allows accreditors to justify why these minimum expectations should not be required. The proposal further includes consideration of achievement on disaggregated categories like race, ethnicity, age, gender, socioeconomic status, first-generation college student status, among others. The proposal calls for accreditors to have policies related to reviewing data between program reviews to monitor an institution’s stability and risk, though the proposal does not require the periodic sharing of data between institution and accreditor.

The proposal sets limits on the amount of time an institution can remain out of compliance with their accrediting agency based on program length and limits the total amount of continuous time an institution can remain out of compliance to three years. The proposal requires accrediting agencies to share a timeline on steps needed to come into compliance.

ED proposes a significant revision to the complaint reporting requirements for accrediting agencies, requiring the disclosure of their review process, allowing for anonymity of the complainant, and requiring disclosure of accrediting actions taken against institutions.

Provisions in the Higher Education Act requires that at least one “representative of the public,” and at least one seventh of total seats, serve on accrediting agency decision making boards.

The proposal calls to further limit who can serve in this “representative of the public” role by excluding individuals who work for institutions accredited by the agency or for membership or trade associations affiliated with the accreditor, or is an employee of a state authorizing body or federal agency.

The proposal also offers new language for accrediting agencies seeking an expansion of scope, substantive change definitions, procedures for accrediting bodies to submit initial and renewal applications for recognition, processes for state recognition of nurse education programs transfer credit policies, and program reviews for institutions under state or federal review.

APLU QUESTIONS FOR CONSIDERATION:

- Do you have any concerns with the proposed changes?
- If so, please describe the level of the concern and its impact.

4. CASH MANAGEMENT

Issue Paper: [PDF](#)

ED proposed policy that would impact a range of institutional business practices, including bulk purchase agreements for course materials, meal plan funds, student credit card fees, and less controversial items including reimbursements and overpayments. As highlighted around the State of the Union, the White House’s [fact sheet](#) on “junk fees” in higher education mentions the plans on course materials, meal plans, and student credit cards.

Books, Supplies, and Course Materials

APLU Staff Lead: Jonathan Elkin

Current regulations allow colleges to negotiate with publishers to bulk purchase books, supplies, and/or online course materials and include the costs as part of tuition and fees to be paid with Title IV funds. The institution must arrange with publishers or other entities to make the materials available below market rates, allow the student to obtain the materials as early as the seventh day of the payment period, and allow the student to opt out of the arrangement. Currently, the institution may avoid these provisions above and maintain the exclusive publishing arrangement if it can document the materials are unavailable elsewhere or there is a compelling health and safety reason. Proponents of these arrangements, sometimes called Equitable Access or Inclusive Access programs, argue that with enough automatic enrollment in the program, they save money for students and institutions when compared to published sticker prices, arguing that the current regulation has stopped the rise in textbook prices, and increased the percentage of students who get course materials on time and thus perform better academically. Among other arguments, opponents argue that the current monopoly system overstates savings, causes artificially high prices with unusable opt-outs, misses the opportunity of open educational resources, and does not yield evidence-based increases in student achievement.

Within the negotiated rulemaking committee, ED, consumer and civil rights advocates, representatives of students and borrowers, and the negotiator representing military and veterans supported updates to switch from an opt-out system to an opt-in system, with materials only automatically billed for incarcerated students. The proposal would require institutions to disclose individual costs, receive student or parent authorization each payment period, and make materials available below competitive market rates.

APLU QUESTIONS FOR CONSIDERATION:

- Does your institution use programs to bulk purchase and automatically bill course materials?
- Do you have concerns with this proposal? If so, how strong are these concerns and how do you articulate the value of your program and concerns with ED's proposal?

Meal Plans

APLU Staff Lead: Jonathan Elkin

Currently many institutions use cash value or declining dollar meal plans and may retain unused funds for other purposes. ED's proposal would require that for Title IV students, any cash value meal plan funds must be used only for meals, and any remaining balance \$1 or higher must be returned to the student within 14 days of the end of the payment period. Students could provide written authorization to carry over the funds through the full academic year or when the student leaves the institution, or apply unused meal plan balances for other allowable charges such as tuition and fees, housing, etc.

In arguing for this proposal, ED staff stated that students' dining funds are "their money," and should be returned to the students if unused.

Dining contractors have raised concerns that they need the full predictable allotment of dining dollars to maintain certainty of operations, support more expensive specialty diets such as Halal, and maintain healthy food options for low-income students. They raised concerns that some low-income students may forego use of dining dollars if they expect a check for unused funds at the end of the semester, which could widen achievement and health gaps.

APLU QUESTIONS FOR CONSIDERATION:

- What presently happens with students' unused cash value meal plan balances at your institution?
- Does your institution have concerns with this proposal? If so, how strong are these concerns?

Student Credit Card Fees

APLU Staff Lead: MacGregor Obergfell

Many institutions have arrangements with financial services companies to provide students debit or prepaid cards for accessing federal financial aid. ED's proposal would forbid institutions, third-party servicers, or financial institutions from charging students fees for utilizing Title IV aid on these products, and would forbid overdraft or withdrawal fees when a student's transaction is denied due to insufficient financial aid dollars. The proposal would also prohibit fees when a student leaves the institution, reaches a certain age, or is inactive on the account. The proposal would assume any other fees are "not inconsistent with the best financial interest of the student" opening the account if the fees are similar to those in the Consumer Financial Protection Bureau's (CFPB's) [Safe Student Account Toolkit](#).

APLU QUESTION FOR CONSIDERATION:

- Does your institution have any concerns with the proposal? If so, please describe the extent of the concerns and the adverse impact on institutions and students.

Credit Balances

ED provided background that in the past, some institutions would "double-dip" by collecting student aid funds from WIOA, GI Bill, and/or ED, and claim they couldn't return the excess ED funds. This regulation would close that loophole by requiring institutions to issue a credit balance to any student that receives Title IV aid and has any amount of aid in excess of cost of attendance.

Late Disbursements

Currently, if a student withdraws or becomes ineligible for aid, institutions must pay the student any final earned Title IV aid payments within 180 days. This proposal would add an exception. Under the proposal, if ED conducts an audit or program review, ED may direct institutions to make late disbursements after the 180 days.

Overpayments

Currently, ED might make federal aid overpayments to a student if they omit income data on FAFSA, reduce their course load, or fail to make satisfactory progress. This proposal would add that if a student is found responsible for an overpayment of federal grants or loans, the student would be allowed to make repayment arrangements with the institution or the Department, instead of being completely ineligible for Title IV aid. The proposed regulatory change clarifies that if an overpayment is the student's responsibility, institutions must provide written notice to the student, and then have 30 days to recover the overpayment or enter into a repayment arrangement. If the institution is unable to meet these obligations within 30 days, the institution has 15 days to report and refer the overpayment to ED.

If the institution is responsible for an overpayment (such as miscalculating aid eligibility), the proposal would update the federal aid restoration process, depending on the type of student aid. For Federal Supplementary Educational Opportunity Grants (FSEOG) overpayments, the

institution would have 45 days to restore the amount to the FSEOG institutional account, plus administrative expenses it claimed. For Pell or TEACH Grants, the institution would have 45 days to adjust the student's award in ED's student system and either return funds to ED or disburse them to other eligible students. If a student's Pell Grant or FSEOG overpayment is referred to ED, the Department must provide a monthly repayment plan option that is reasonable and affordable, with clear consent from the student and a chance to change the plan with new financial circumstances. A student is not liable for an overpayment less than \$100 for loans or \$50 for Pell grants.

APLU QUESTION FOR CONSIDERATION:

- Does your institution have any concerns with any of these other cash management provisions? If so, please describe the level and nature of concerns, along with any proposed alternatives.

5. RETURN TO TITLE IV (R2T4)

APLU Staff Lead: Jonathan Elkin | Latest issue paper [PDF](#)

Under existing regulations, when a student withdraws before completing 60% of the enrollment period, institutions must return Title IV funds to ED (R2T4) on a prorated basis based on the percentage of time the student completes. Financial aid administrators have found the R2T4 calculations overly complicated and burdensome, and ill-attuned to the modern realities of online and hybrid courses without fixed seat time schedules. The proposed regulations would make a variety of updates to simplify the R2T4 process, including for online coursework, and add consumer protections.

R2T4 for Loan Borrowers

Currently, if a federal loan borrower withdraws, the loan servicer issues the student a final demand letter, in which they must repay the loan plus interest within 30 days. The proposal would instead place the student into a loan repayment plan under the same terms as a completer.

Avoiding Burdensome R2T4 Calculations

If certain conditions are met, ED's proposal would allow institutions to fully refund all Title IV aid to ED for a given period, without needing to make a complicated and burdensome R2T4 calculation based on days the student attended. Specifically, the proposal states that an institution would not need to complete the R2T4 calculation if the institution has a policy that if a student leaves before a certain point in the term (for example due to family or medical circumstances), the institution will cancel the student's balance, refund institutional charges, and treat a student as having never attended that period.

Online Dissertation Research

The proposal adds an exemption so that institutions need not take attendance for dissertation research courses offered through distance education.

Attendance in Modular Courses

One particular challenge for R2T4 calculations has been the rise in modular or mini-courses, which students can start at any point in the term. The proposed regulation would simplify the R2T4 calculation in these situations. Under the new proposal, only if a student starts a module, the institution would count that module's full scheduled days beginning at their start date, rather than the total expected length of the module.

APLU QUESTION FOR CONSIDERATION:

- Do you have any concerns with the R2T4 proposals? If so, please describe the level and nature of concern, in addition to recommendations any for improvement?

6. EXPANDING TRIO ELIGIBILITY FOR UNDOCUMENTED STUDENTS

APLU Staff Lead: Jonathan Elkin

The negreg committee reached consensus. Final issue paper to be proposed as a rule: [PDF](#)

ED proposes to expand the TRIO pre-college programs to undocumented students who are enrolled in U.S. high schools, or middle school students intending to enroll in U.S. high schools. The proposal would affect Upward Bound, Talent Search, and Educational Opportunity Centers, and would not change eligibility for Student Support Services or Ronald E. McNair Postbaccalaureate Achievement Program. The proposed regulations would allow TRIO to provide undocumented students with tutoring, mentoring, college search, and other support services. The proposal would still forbid TRIO grant aid or stipends to undocumented students, in order to remain consistent with HEA statutory prohibitions on any federal grants for undocumented students.