



OFFICE OF THE VICE PRESIDENT - GRADUATE AND UNDERGRADUATE AFFAIRS  
AND VICE PROVOST - EQUITY, DIVERSITY AND INCLUSION

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August 23, 2024

Via Federal eRulemaking ([www.regulations.gov](http://www.regulations.gov))

Gregory Martin  
Director, Policy Development Group  
Office of Postsecondary Education  
U.S. Department of Education  
400 Maryland Avenue SW, 5th floor  
Washington, DC 20202

Re: Proposed Rules for Program Integrity and Institutional Quality: Distance Education,  
Return of Title IV, Higher Education Act Funds, and Federal TRIO Programs  
Docket ID: ED-2024-OPE-0050

Dear Mr. Martin:

On behalf of the University of California (UC), one of the country's premier public research university systems, serving approximately 295,000 undergraduate and graduate students, we appreciate the opportunity to comment on the July 24, 2024, notice of proposed rulemaking on Program Integrity and Institutional Quality: Distance Education, Return of Title IV Higher Education Act Funds (R2T4), and Federal TRIO Programs as referenced in Docket ID: ED-2024-OPE-0050.

These proposed regulations are positive steps designed to minimize student opportunity costs while maintaining access to institutions of higher learning. However, we urge the department to consider minimizing the unintended consequences of the proposed rules. A few highlights from our feedback below include requests for:

- Revision to the provisions requiring attendance taking and reporting to focus on virtual locations or to exclude institutions not required to take attendance.
- Clear, consistent and timely guidance on how institutions should consider the application of rules tied to distance education given the wide variation and combination of educational program modalities.
- Exclusion of institutional housing and meals from the withdrawal exemption provision.
- Communication and outreach plans for students eligible for § 668.21(a)(2)(ii) should they default or be delinquent on repayments.

## **Distance Education**

We recognize the value of additional information collection on programs offered through distance education, particularly as online technologies have been embraced by more traditional brick-and-mortar institutions and applaud the department's efforts. However, we remain concerned about the impact of the proposed provisions that would require policies that may not be efficient for institutions of higher education related to attendance and encourage the department to develop clear, consistent and timely guidance recognizing the variation and combination of educational program modalities.

### **§ 668.22(b)(3)(ii) and 668.41(h) Requirements for attendance taking and reporting in distance education coursework**

Presently, no UC campus is required to take attendance. While we understand the importance of accurate withdrawal dates, we do not believe that requiring attendance taking in distance education courses at all institutions is necessary. We ask for these provisions to be revised to exclude institutions that do not meet § 668.22(b)(3)(i) provisions or to adjust from enrollment in "distance education or correspondence courses" to "an educational program through a virtual location as defined in § 600.2." We implore the department to entrust our faculty's use of online learning platforms and their ability to document academic engagement as they are similarly entrusted to do for in-person courses. Alternatively, we suggest the department be prepared to provide clear and consistent guidance on how institutions are to consider the application of these rules, especially as new distance education programs arise with different mixes and combinations of course modalities. This is especially critical for auditors who may not understand the nuances described during the negotiated rulemaking sessions.

Additionally, the department's estimated cost for implementation of these new requirements is low. We estimate \$1.6 million in start-up costs in year one across our ten campuses, with approximately \$460,000 systemwide in annual maintenance costs if this new provision is enacted.

In its discussion of costs and benefits, the department cites a primary concern of students in distance education courses not formally withdrawing since they are not on campus. This reason assumes that students taking courses on campus and in-person all formally withdraw — many do not. This concern is already addressed by the unofficial federal withdrawal policy. Our institutions are required to determine the last date of attendance or engagement for a student with failing grades. Additionally, as a result of 34 CFR §690.80(b)(2)(ii), §668.21(c), and §668.22(7)(i), we are required to document the commencement of academic activity at the start of the term for the express purpose of determining if any resulting failing grades are a result of lack of academic activity. The department issued caution during a Distance Education training webinar that took place on April 26, 2021, noting school actions such as consistently taking attendance for a distance education course during a payment period may constitute grounds for said institution to be considered one that is required to take attendance. We are concerned § 668.22(b)(3)(ii) and 668.41(h) will place our institutions as schools required to take attendance if there is no explicit language preventing this interpretation.

Further, the provisions as written may result in confusion and stymie the development of future online education programs. This is also of concern for future audits and how these provisions may convolute program findings for those offered in mixed form and duration. For example, one of our campuses recently launched an undergraduate arts degree with a one-year in-person requirement with the remaining three years of the program to be taken fully online. This program was launched to provide an opportunity for students to reduce their living costs as the institution is in a high cost-of-living area of the state. Future education program innovation from our faculty in pursuing economic justice will be halted due to these proposed provisions.

#### **Return of Title IV (R2T4)**

We generally support the provisions tied to additional R2T4 flexibilities and simplifications, including those for incarcerated individuals, students with federal loan disbursements and those tied to simplifying the R2T4 module calculation. However, we are concerned by the exclusion of institutional housing and meal costs from the withdrawal exemption provision. In addition, we recommend that the department develop communication and outreach plans for those students should they default or become delinquent on their payments.

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

We support the proposal of a withdrawal exemption for campuses and would request the statute define institutional charges as exclusive of institutional housing and meals based on direct proration of use for the payment period. 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.

#### **§ 668.21(a)(2)(ii) Treatment of remaining amounts of FFEL/Direct Loan funds if the student does not begin attendance**

We appreciate this provision's intent to remove immediate demand letters on loan funds issued to the student. We would also ask that the Department take this a step further to consider the student's future ability to return to higher education given one-third of borrowers have debt but no degree<sup>i</sup>. We would ask that additional communication and outreach plans be formed for these student borrowers on their opportunities to rehabilitate their loans so that they may be allowed to return to their studies.

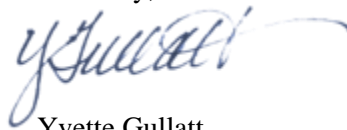
## Federal TRIO Programs

We would like to applaud the department's efforts to improve opportunities and remove financial barriers for low-income and underrepresented students in the proposed rules. We are pleased to see the expansion of eligibility for federal TRIO programs to all individuals enrolled or those seeking to enroll in high school in geographic areas served by these programs. This expansion will be of tremendous benefit to students in California. It will remove the ethical quandary often placed on TRIO program administrators who have had to turn away many underserved students.

UC continues to support this effort to expand student eligibility and provide greater access to postsecondary education for disadvantaged students under three programs that offer student services in a pre-postsecondary education setting—the Talent Search program, the Educational Opportunity Centers program and the Upward Bound program—by expanding participant eligibility to include all students who have enrolled in or who seek to enroll in a high school in the United States, territories or Freely Associated States.

The University of California appreciates the opportunity to comment on the Department of Education's plan to address these various issues via negotiated rulemaking. If you have any questions regarding these comments, please contact Associate Vice President Chris Harrington at [Chris.Harrington@ucdc.edu](mailto:Chris.Harrington@ucdc.edu) or 202-997-3150.

Sincerely,



Yvette Gullatt  
Vice President for Graduate and Undergraduate Affairs  
Vice Provost for Equity, Diversity and Inclusion

cc: Provost and Executive Vice President Katherine S. Newman, Academic Affairs  
Interim Senior Vice President Meredith Turner, External Relations and Communications  
Associate Vice President Chris Harrington, Federal Governmental Relations

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>