

DEPARTMENT OF EDUCATION**34 CFR Parts 600, 643, 644, 645, and 668**

[Docket ED–2024–OPE–0050]

RIN 1840–AD68, 1840–AD85, and 1840–AD92

Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary is proposing to amend 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 would clarify, update, and consolidate certain provisions that apply to distance education; the return of title IV, HEA funds; and the Federal TRIO programs. A brief summary of the proposed rule is available at www.regulations.gov/docket/ED-2024-OPE-0050.

DATES: We must receive your comments on or before August 23, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at regulations.gov. Information on using Regulations.gov, including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.” If you require an accommodation or cannot otherwise submit your comments via regulations.gov, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment only once. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department’s policy is to generally make comments received from members of the public available for public viewing at <https://www.regulations.gov>. Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to

identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would facilitate readers identifying that individual. The Department reserves the right to redact at any time any information in comments that identifies other individuals, includes information that would facilitate readers identifying other individuals, or includes threats of harm to another person.

FOR FURTHER INFORMATION CONTACT: Gregory Martin, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 205–4595. Email: NegRegNPRMHelp@ed.gov.

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

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Abbreviations
- II. Executive Summary
- III. Summary of Major Provisions
- IV. Invitation To Comment
- V. Authority for This Regulatory Action
- VI. Background
- VII. Public Participation
- VIII. Negotiated Rulemaking
- IX. Significant Proposed Regulations
 - A. Distance Education
 - B. Return of Title IV Funds
 - C. Federal TRIO Programs
- X. Regulatory Impact Analysis

I. Abbreviations

CFR: Code of Federal Regulations
 CIP Code: Classification of Instructional Programs code
 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
 HHS: the United States Department of Health and Human Services
 LEA: Local educational agency
 PEP: Eligible prison education program
 PRWORA: Personal Responsibility and Work Opportunity Reconciliation Act
 R2T4: Return of title IV funds
 RIA: Regulatory Impact Analysis
 SEA: State educational agency
 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

These proposed regulations address three substantive areas: distance education, return of title IV funds (R2T4), and the Federal TRIO programs (TRIO). The Department is addressing these areas in an effort to help ensure students are well served by the institutions of higher education they attend, increase access to postsecondary education for disadvantaged students, and ensure that Federal Student Aid programs work in the best interests of students. As the three distinct topics are structured and addressed independently in this proposed rule, the Department generally intends the rule’s provisions to be severable from each other. The Department expects to provide additional detail on severability in the final rule once we consider public comments and finalize the regulatory language.

The proposed distance education regulations would help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by expanding the definition of an *additional location* to include virtual locations for programs offered entirely online or through correspondence, adding a definition of “distance education course,” requiring institutions to report their students’ distance education status, and disallowing asynchronous distance education in clock-hour programs for title IV, HEA purposes. The proposed R2T4 regulations would help withdrawn students repay outstanding Direct Loan credit balances, increase the accuracy and simplicity of performing R2T4 calculations, address unique circumstances for what constitutes a withdrawal, clarify that distance education programs are attendance taking, and codify longstanding policies into regulation. The proposed changes to TRIO would 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.

III. Summary of the Major Provisions

As specifically set forth in each of the areas identified below, the proposed regulations would:

Distance Education (§§ 600.2, 668.3, 668.41)

- Amend § 600.2 to: (1) include in the definition of *additional location* virtual locations where 100 percent of an educational program is provided through distance education or correspondence courses; (2) revise the definition of *clock hour* to reflect that, for title IV, HEA purposes, coursework delivered via distance education cannot be asynchronous; and (3) add a definition for *distance education course*.

- Amend the academic year definition in § 668.3 to specify that, for purposes of the title IV, HEA definition of an academic year, asynchronous coursework offered through distance education could only be offered in credit-hour programs.

- Amend § 668.41 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 § 668.21 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.

- Amend § 668.22 to exempt institutions from performing an R2T4 calculation in the event that (1) a student is treated as never having begun attendance; (2) the institution returns all title IV aid 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 current year balance owed by the student to the institution due to the institution's return of title IV funds to the Department.

- Amend § 668.22 to codify that an institution that is required to take attendance must, within 14 days of a student's last date of attendance, document the student's withdrawal date.

- Amend § 668.22 to require an institution to take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program.

- Amend § 668.22 to allow a confined or incarcerated individual, in a term-

based setting, to not have to come back from a leave of absence to where the student left off, and instead, allow the individual to return at a different point in their prison education program (PEP).

- Amend § 668.22 to streamline and make consistent institutions' calculation of the percentage of the payment period completed for a clock-hour program.

- Amend § 668.22 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.

Federal TRIO Programs (§§ 643.3, 644.3, 645.3)

- Amend § 643.3 to expand who would be able to participate in a Talent Search project. Eligibility would be extended to an individual who is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

- Amend § 644.3 to expand who would be able to participate in an Educational Opportunity Centers project. Eligibility would be extended to an individual who is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

- Amend § 645.3 to expand who would be able to participate in a Regular or a Math and Science Upward Bound project. Eligibility (other than for direct cash stipends) would be extended to an individual who is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

Costs and Benefits

As further detailed in the *Regulatory Impact Analysis*, the Department estimates present value net benefits of \$1,434,537,761 over ten years at a 2 percent discount rate. This is equivalent to an annualized net benefits of \$159,702,107 over ten years. Additionally, we estimate annualized quantified costs of \$9,423,657 related to paperwork burden.

IV. Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Department will not accept comments submitted after the comment period closes. To ensure that we do not receive duplicate

copies, please submit your comments only once.

The following tips are meant to help you prepare your comments and provide a basis for the Department to respond to issues raised in your comments in the notice of final regulations (NFR):

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.

- Refer to specific sections and paragraphs of the proposed regulations throughout your comments, particularly in any headings that are used to organize your submission.

- Explain why you agree or disagree with the proposed regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal or professional experiences.

- Where you disagree with the proposed regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.

- Do not include personally identifiable information (PII), such as Social Security numbers or loan account numbers, for yourself or for others in your submission. Should you include any PII in your comment, such information may be posted publicly.

Mass Writing Campaigns: In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all of the substantive comments included in the submissions along with the total comment count for that document or package to

Regulations.gov. A well-supported comment is often more informative to the agency than multiple form letters.

Public Comments: The Department invites you to submit comments on all aspects of the proposed regulatory language specified in this NPRM in §§ 600.2, 643.3, 644.3, 645.3, 668.3, 668.21, 668.22, and 668.41, and in the Regulatory Impact Analysis and Paperwork Reduction Act sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that are computer-generated. Comments containing the promotion of commercial

services or products and spam will be removed.

We may not address comments outside of the scope of these proposed regulations in the NFR. Generally, comments that are outside of the scope of these proposed regulations 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, which includes topics negotiated but not included in this NPRM.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the NFR.

Comments containing personal threats will not be posted to *Regulations.gov* and may be referred to the appropriate authorities.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the regulation easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.2 General definitions.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulation easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

V. Authority for This Regulatory Action

The legal basis for these proposed 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 title IV 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. This proposed rule would update, consolidate, and revise requirements in three distinct title IV areas: the return of title IV, HEA funds; distance education; and the Federal TRIO programs, impacting 34 CFR parts 600, 643–645, and 668. The Department's specific legal authority to propose regulations 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. Among other things, section 103(7) requires that distance education support regular and substantive interaction between students and the instructor, and the modifications we propose in this NPRM would give the Department the tools to ensure such programs satisfy this requirement.

Return of Title IV, HEA Funds.

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

Federal TRIO Programs. Section 402A of the HEA outlines the application process, permissible services, awarding process, and grant limitations for TRIO. This proposed rule would clarify the scope of qualified individuals who are eligible to participate in certain TRIO programs.

VI. Background

Distance Education (§§ 600.2, 668.3, 668.41)

The definition of "distance education" in § 600.2 lists the technologies that allow for instruction to occur between instructors and students who are separated. It also requires that such education must include regular and substantive interaction between the two parties and explains what such interaction must entail. With the development of the technology that supports distance learning and particularly in the wake of the pandemic, the Department observed that the use of distance education at eligible institutions has increased and is likely to continue to do so. However, as the Department noted in the distance education issue paper and during the negotiated rulemaking on this issue, we have 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.¹ The proposed changes will assist the Department with these issues.

The other distance education issue the Department seeks to address with this rulemaking involves clock-hour programs, which traditionally have required considerable hands-on

¹ <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/program-integrity-and-institutional-quality-session-1-issue-paper-distance-education-final.pdf>.

instruction to properly prepare students for employment in their field of study. In the September 2, 2020, final rule on distance education, the Department was persuaded that allowing for asynchronous instruction in clock-hour programs was sensible as long as it was adequately tracked through appropriate technology (85 FR 54742).² However, after additional review of the issue during its oversight and compliance activities, and based on complaints received from students, the Department believes this expansion puts students and taxpayers at risk. Consequently, the Department is proposing to eliminate asynchronous instruction for clock-hour programs.

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

The R2T4 regulations govern the process institutions must conduct when a title IV recipient ceases attendance during a payment period (term) or a period of enrollment. Title IV funds are awarded to a student under the assumption that the student will attend school for the entire period for which the funds were awarded. When a student withdraws, they may no longer be eligible for the full amount of title IV funds that they were originally scheduled to receive and that the institution disbursed. After an institution completes an R2T4 calculation, funds that were awarded to the student may need to be returned to the Department.

R2T4 is consistently in the Department's top 10 compliance findings for schools and yields complex and challenging questions. The Department proposed the regulatory changes in this section to address some of the issues in the regulations that have been identified in these findings.³ Through these proposed R2T4 regulations, the Department seeks to: (1) help withdrawn students repay outstanding Direct Loan credit balances; (2) increase the accuracy and simplicity of performing R2T4 calculations; (3) address unique circumstances for what constitutes a withdrawal; and (4) codify longstanding policies into regulation.

Federal TRIO Programs (§§ 643.3, 644.3, 645.3)

The TRIO programs are Federal outreach and student services programs designed to identify and provide

services for individuals from disadvantaged backgrounds. Individuals from disadvantaged backgrounds include low-income individuals, first-generation college students, students with disabilities, students with limited English proficiency, students experiencing homelessness, and students in foster care. The TRIO programs are designed to help students from disadvantaged backgrounds progress through the academic pipeline from middle school to postbaccalaureate programs.

Current regulations limit TRIO programs to an individual that is a citizen or national of the United States, a permanent resident of the United States, a permanent resident of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or a resident of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands). See §§ 643.3(a)(1)(i) through (v), 644.3(a)(1)(i) through (v), and 645.3(a)(1) through (5). An individual is also currently eligible to participate in the TRIO programs if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

The Department's proposed changes would impact the three TRIO programs that serve students in a pre-postsecondary education context: the Upward Bound program, the Talent Search program, and the Educational Opportunity Centers program. The Upward Bound program prepares high school students for college while the Talent Search program encourages participants to complete secondary and postsecondary education. The Educational Opportunity Centers program provides financial and academic counseling to qualified individuals, generally over the age of 19, though individuals under 19 are eligible to receive program services if they meet the requirements of current 34 CFR 644.3(a)(2)(ii), who want to enter or continue a postsecondary education program. The Department proposes to broaden participation in these three programs by expanding eligibility to all disadvantaged individuals who have enrolled in or who seek to enroll in a

high school in the United States, territories, or Freely Associated States, which are the geographic areas served by the TRIO programs. This proposal would allow the three TRIO programs that serve students in the pre-postsecondary education context to serve students who are already receiving or seek to receive public educational services from middle and high schools.

The McNair Scholars program, the Student Support Services program and the Training Program for Federal TRIO Programs would not be impacted by these proposed changes. The Department proposes to limit this eligibility expansion to the three TRIO programs that serve students in the pre-postsecondary context, because the Department believes that all who attend high school in the United States should have the same access to TRIO services. The TRIO provisions would additionally eliminate the operational burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule, enabling a greater focus on delivering educational services to all students. The proposed rule change would assist students on their path to and attainment of postsecondary education.

VII. Public Participation

The Department has significantly engaged the public in developing this NPRM, as described here and below in the *Negotiated Rulemaking* section.

On March 24, 2023, The Department announced public hearings at which interested parties could comment on the topics suggested by the Department or suggest additional topics for consideration.⁴ The Department conducted virtual public hearings on April 11 and 12, 2023. The Department considered the advice and recommendations submitted by individuals and organizations in these public hearings in developing initial proposed regulatory provisions for consideration by the Program Integrity and Institutional Quality Committee (Committee). You may view transcripts of the public hearings at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

The Department also accepted written comments on possible regulatory provisions that were submitted to the Department by interested parties and organizations as part of the public hearing process. You may view the written comments submitted in response to the March 23, 2023, **Federal Register** notice on the Federal

² <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

³ Program Reviews—<https://studentaid.gov/data-center/school/fines-and-findings>; Annual Top Ten School Findings—<https://studentaid.gov/data-center/school/program-reviews>.

⁴ 88 FR 17777.

eRulemaking Portal at www.regulations.gov, within docket ID ED–2023–OPE–0039. Instructions for finding comments are also available on the site under “FAQ.”

On November 29, 2023, the Department published a notice in the **Federal Register** (88 FR 83365) announcing the intent to establish a negotiated rulemaking committee to prepare proposed regulations on: (1) The Secretary’s recognition of accrediting agencies under 34 CFR part 602 and related parts; (2) Institutional eligibility under 34 CFR 600.2, including State authorization as a component of such eligibility under 34 CFR 600.9; (3) The requirements for distance education under 34 CFR 600.2 that pertain to clock-hour programs and reporting for students who enroll primarily online; (4) Return of Title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing the administrative burden for institutions of higher education under 34 CFR 668.22; (5) Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, and loss of such funds under 34 CFR part 668, subpart K; and (6) The eligibility requirements for participants in TRIO.

VIII. Negotiated Rulemaking

Section 492 of the HEA requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Department, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the **Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of proposed regulations on which the negotiators reached consensus—unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. You can find further information on the negotiated rulemaking process at: www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

On November 29, 2023, the Department published a notice in the **Federal Register** (88 FR 83365) announcing its intention to establish a Committee, the Program Integrity and Institutional Quality Committee, to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee meetings, requested nominations for individual negotiators to serve on the negotiating Committee, and announced the topics that Committee would address.

The Committee included the following members, representing their respective constituencies:

- *Business Officers from Institutions of Higher Education*: Joe Weglarz, Marist College, and Dom Chase (alternate), Ivy Tech Community College of Indiana.
- *Civil Rights Organizations and Consumer Advocates*: Carolyn Fast, The Century Foundation, and Magin Misael Sanchez (alternate), UnidosUS.
- *Financial Aid Administrators*: JoEllen Price, San Jacinto College, and Zack Goodwin (alternate), University of Nevada, Las Vegas.
- *Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority-serving Institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA)*: Charles B. W. Prince, Dillard University, and D’Angelo Sands (alternate), Texas A&M University-Corpus Christi.
- *Institutional Accrediting Agencies Recognized by the Secretary*: Jamiene S. Studley, WASC Senior College and University Commission, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges.
- *Legal Assistance Organizations*: Robyn Smith, Legal Aid Foundation of Los Angeles and National Consumer Law Center, and Sophie Laing (alternate), Pine Tree Legal Assistance.
- *Private Nonprofit Institutions of Higher Education*: Erika Linden, Des Moines University, and Scott Dolan (alternate), Excelsior University.
- *Programmatic accrediting agencies recognized by the Secretary, to include State agencies recognized for the approval of nurse education*: Laura Rasar King, Council on Education for Public Health, and Amy Ackerson (alternate), Missouri State Board of Nursing.
- *Proprietary Institutions of Higher Education*: Jillian Klein, Strategic Education, Inc., and David Cohen (alternate), Five Towns College and APC Board of Directors.

- *Public Four-Year Institutions of Higher Education*: Jason Lorgan, University of California, Davis, and Alyssa Dobson (alternate), Slippery Rock University.

- *Public Two-Year Institutions of Higher Education*: Jo Alice Blondin, Clark State College, and Michael Cioce (alternate), Rowan College at Burlington County.

- *State Attorneys General*: Diana Hooley, Massachusetts Attorney General’s Office.

- *State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education*: John Ware, Ohio State Board of Career Colleges and Schools, and Robert Anderson (alternate), State Higher Education Executive Officers Association.

- *Students or borrowers, including currently enrolled borrowers, or groups representing them*: Jessica Morales, American University—Washington School of Law, and Emmett Blaney (alternate), Young Invincibles.

- *U.S. military service members, veterans, or groups representing them*: Barmak Nassirian, Veterans Education Success, and Ashlynn Haycock-Lohmann (alternate), Tragedy Assistance Program for Survivors.

- *Federal Negotiator*: Gregory Martin, U.S. Department of Education.

The Department also invited nominations for a Federal TRIO Programs Subcommittee (Subcommittee). The Subcommittee members were not voting members of the Committee unless otherwise designated to represent a constituency; however, they provided a recommendation for TRIO and served as a resource to the Committee. The Subcommittee members were:

- *Current or former participants in a Federal TRIO Program*: Wade Williams, Crowder College Foundations.

- *Institutions of Higher Education*: D’Angelo Sands, Texas A&M University-Corpus Christi.

- *Public or private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth*: Emalyn Lapus, Japanese Community Youth Council.

- *Secondary schools, including local educational agencies with secondary schools*: Geof Garner, Multnomah Education Service District.

- *State Officials, including State Higher Education Executive Officers, State Authorizing Agencies, and State Regulators of Institutions of Higher Education*: Michael P. Meotti,

Washington Student Achievement Council.

- *U.S. Department of Education:* Aaron Washington, Office of Postsecondary Education, and Hannah Hodel, Office of General Counsel.

The Committee met for three rounds of negotiations, each of which was held over four days between January and March 2024. The Subcommittee met on January 12 and February 9. At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any member of the Committee and noted that consensus checks would be taken issue by issue.

The Committee reviewed and discussed the Department's drafts of regulatory language, as well as alternative language and suggestions proposed by Committee members. During each negotiated rulemaking session, provided opportunities for public comment at the end of each day. Additionally, during and between each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

At the meeting on March 4, 2024, the Committee reached consensus on the Department's proposed regulations on TRIO. The Department has published the proposed TRIO amendatory language in this NPRM without substantive alteration to the agreed-upon proposed regulations. The Committee did not reach consensus on the other issues considered.

For more information on the negotiated rulemaking sessions please visit www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

IX. Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

A. Distance Education

Definitions (§ 600.2)

Current Regulations: The current definition of *additional location* in § 600.2 includes two categories: the traditional physical facilities that are geographically separate from the main campus of the institution and correctional institutions where students receive postsecondary educational instruction.

Proposed Regulations: The Department proposes to add a third

category to this definition: virtual locations, through which institutions offer 100 percent of an educational program by distance education or correspondence courses, notwithstanding mandatory on-campus or residential periods of 90 days or less.

Reasons: Under the current regulations and Department processes, there is no distinction between an institution's on-campus programs and programs offered entirely online or in a hybrid format. For example, institutions may have online programs related to on-campus programs with the same Classification of Instructional Programs (CIP) code, sometimes with a different curriculum. If they have the same CIP code, however, the Department is unable to distinguish between the two programs for many purposes including program oversight, audits, looking at outcome metrics, and College Scorecard program-level data, including debt, earnings, and completion. The Department is also unable to determine the precise amount of title IV funds being expended in distance education programs or determine the State where the student is located while enrolled.

Establishing a virtual location as a type of *additional location* would distinguish programs offered entirely through distance education from those that occur fully or partially at a physical facility of the school or at a correctional institution. The proposed changes would help the Department measure and better understand student outcomes and the amount of title IV program funds being expended in each setting and conduct more accurate program oversight including through better tailored program reviews. The proposed changes would also improve the Department's ability to determine the States where title IV, HEA recipients are located and allow the Department to provide this information to State oversight entities and the public. This additional information would improve the ability of State oversight entities to oversee distance education programs and better assess the risk that such programs may pose to individuals residing in their States.

In addition, having distinct virtual locations would allow the Department to account for situations in which an institution ends its online offerings irrespective of what is occurring at a school's brick-and-mortar campus or if an institution ended its brick-and-mortar offerings but continued its online offerings. This would allow the Department to monitor an institution's compliance with close-out requirements, consistent with the monitoring done for closures of brick-

and-mortar institutions and locations. Separately identifying virtual locations would also provide greater protection for students if an institution offering both distance education and in-person instruction suspends coursework in one modality but maintains the other. Students whose modality has been discontinued and who may not wish to, or may not be able to, continue in the alternative modality, would be eligible for closed school discharges. For example, students that enrolled in an on-campus program may have done so with the expectation that they would be instructed in person, and they may not have otherwise chosen an online program. Similarly, a student who enrolled in an online program may not be inclined or able to move into an on-campus program for a number of reasons, such as preference for a flexible schedule, not living near the physical campus, or a preference for online instruction. This regulatory change will provide a clear mechanism for providing relief.

Although the definition of a virtual location refers primarily to programs offered entirely through distance education, the Department proposes to include in the definition an exception for programs that have limited requirements for students to attend on campus activities, including preparation activities and residential periods of instruction of 90 days or less. These exceptions are intended to prevent institutions from circumventing the requirement to report an additional location by requiring a minimal amount of on-campus or residential activities.

The Department notes 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.

Current Regulations: The current definition of *clock hour* in § 600.2 allows for distance education in which a synchronous or asynchronous class, recitation, or lecture provides direct interaction between students and instructors and for asynchronous learning activities in which students interact with technology that can monitor and document the time that they participate in the activity.

Proposed Regulations: The Department proposes removing these asynchronous options using distance education under the definition of a clock-hour.

Reasons: The definition of a "clock hour" describes the types of coursework

and the conditions under which the coursework is offered that may apply to a student's eligibility for title IV, HEA funds. Coursework that does not meet this definition may still be conducted in a clock-hour program but cannot be counted toward a student's eligibility for title IV, HEA funds, in particular the ability to receive a second or subsequent disbursement of such funds. Since the very first time that the Department defined "clock hour" for the Basic Educational Opportunity Grant (BEOG) program, which later became the Pell Grant program, the Department has defined a "clock hour" as a period of time in which a student is either in a class, lecture, or recitation with an instructor, or engaged with other types of coursework that are supervised by an instructor (45 FR 48494). Although the Department defines a "clock hour" differently for correspondence coursework, such coursework is associated with other significant limitations and requirements that limit waste, fraud, and abuse.

The Department has long had concerns about allowing clock hours offered through distance education to count toward a student's eligibility for title IV, HEA funds, particularly regarding an institution's ability to adequately identify true engagement with academic coursework and monitor how long that engagement took place. However, in the September 2, 2020, final rule on distance education, the Department was persuaded that clock hours completed through asynchronous instruction could be permitted to count toward a student's title IV eligibility as long as each clock hour offered asynchronously was adequately tracked through appropriate technology (85 FR 54742).⁵ Since that time, the Department's experiences with asynchronous coursework through interactions with institutions and students during program reviews and other oversight activities have frequently demonstrated that its original concerns were well-founded: such coursework often consists of limited or no engagement between instructors and students, and even when engagement does happen, institutions have difficulty adequately monitoring the amount of time that students spend on asynchronous activities.

Asynchronous learning activities often require a level of technology that schools lack or fail to meet, resulting in substandard education consisting of students having to learn material on

their own. For example, the Department has found during program reviews and from speaking to students that asynchronous learning in clock-hour programs has often consisted of playing videos, reading assignments or scrolling through pages, without the meaningful interaction with the coursework or instructors that is necessary for mastery in hands-on job training programs and the development of important skills such as critical thinking and effective communication. The National Accrediting Commission of Career Arts and Sciences (NACCAS), a Department-recognized accreditor of cosmetology schools, shows another example in its definition of asynchronous learning, which includes "scrolls through reading material" and "works on assignments" as a learning activity.⁶ The Department is concerned that these kinds of learning activities, while helpful for students, would not meet the definition of a "clock hour" because scrolling through materials and working on assignments are activities that are more comparable to homework than 50 to 60 minutes of in-class or faculty-supervised instruction or training.

Asynchronous instruction in clock-hour programs also does not foster direct interaction between students and instructors, which can make it difficult for students to receive the training necessary for the types of occupations for which clock-hour programs train students. Students have repeatedly informed the Department during program reviews and oversight activities that the lack of direct engagement with instructors hampered their ability to obtain the skills necessary to pass certification exams or obtain a job in their field. The Department's observations during its compliance work are consistent with studies performed on the issue. As explained in the Regulatory Impact Analysis, surveys and evaluations of job training programs that are typically offered in clock hours have shown general concerns that distance education is not sufficient to provide learners with the type of "hands-on" experience that they need and expect in those kinds of programs.⁷ One recent study of a technical program found that students had greater clarity in understanding and confidence to

solve exam questions after synchronous, rather than asynchronous, instruction.⁸ The same study found that students had significantly higher exam scores in topics taught through synchronous instruction compared to asynchronous instruction.⁹ Eliminating the asynchronous option for clock-hour programs would provide a more effective education, which would better prepare students for the kinds of occupations that have traditionally required more hands-on instruction and training, and which, in many cases, require passing a licensure or certification exam in order to obtain employment. The Department notes that this does not prevent institutions from using asynchronous activities to supplement a student's program of study, but those activities cannot be counted toward clock hours used for title IV purposes, just as assigned reading outside of classroom hours does not count for that purpose.

Current Regulations: None.

Proposed Regulations: We propose to add a definition of *distance education course* that would include courses that are offered exclusively through distance education, notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences.

Reasons: As with the addition of virtual location as a type of additional location, the proposed addition of a definition for *distance education course* would enable the Department to better assess the effectiveness of distance education and compare its outcomes with those of traditional in-person instruction. The proposed definition also would help clarify a term about which there has been some confusion between institutions and students, as pointed out by negotiators, and would facilitate determinations of whether institutions are in compliance with the requirement to acquire additional accreditor approval when they pass the 50 percent threshold for the number of classes they offer via distance education, as explained in Dear Colleague Letter GEN-23-09.¹⁰

The Department proposes to define a "distance education course" as comprising only distance education as

⁶ See the 2024 NACCAS handbook here (as of June 13, 2024): <https://naccas.org/naccas-handbook>.

⁷ https://www.heldrich.rutgers.edu/sites/default/files/2022-06/Process_Evaluation_of_the_Integration_of_Title_I_and_Title_II.pdf; <https://www.newamerica.org/education-policy/reports/five-things-policymakers-should-know-about-short-term-credentials/5-students-think-hands-on-training-is-useful-but-few-adults-with-short-term-certificates-receive-this-training>.

⁸ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_.223.aspx.

⁹ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_.223.aspx.

¹⁰ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

⁵ <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

defined under 34 CFR 600.2 for several reasons. First, we intend for the definition to be as consistent as possible with the definition of “distance education” currently used for the Integrated Postsecondary Education Data System (IPEDS). We also wish to provide clarity regarding an institution’s calculation of the 50 percent threshold for distance education courses described above as well as proposed requirements for institutions to provide student-specific reporting of distance education coursework described below under § 668.41. It is not the Department’s intent to capture in this definition coursework that is offered primarily on campus but that includes online components such as a learning management system where assignments or homework are maintained or submitted.

Academic Year (§ 668.3)

Current Regulations: Current § 668.3(b) sets forth certain definitions applicable to the title IV programs, and within the definition of a week of instructional time in § 668.3(b)(2)(ii), there are two sub-paragraphs stating that institutions offering asynchronous coursework through distance education must make available to students the resources necessary for academic engagement, and they must expect students to perform educational activities demonstrating academic engagement during the week.

Proposed Regulations: We propose to amend § 668.3(b)(2)(ii)(A) and (B) to limit asynchronous coursework that can count toward an institution’s definition of an academic year to coursework offered in credit-hour programs.

Reasons: These edits are necessary to conform the regulations in § 668.3 with the Department’s proposal regarding asynchronous education in clock-hour programs in § 600.2.

Reporting and Disclosure of Information (§ 668.41)

Current Regulations: Current § 668.41 lists institutional reporting and disclosure requirements.

Proposed Regulations: We propose, in new paragraph (h), to require institutions to report their enrollment in distance education or correspondence courses.

Reasons: As requested by many of the negotiators, the Department proposes to add a requirement in § 668.41 to report each recipient of title IV, HEA assistance by enrollment status in distance education or correspondence courses. We believe this will provide the Department with expanded information to better answer questions

about college access, persistence, completion, and success, and to better inform student-centered policies for distance education. This reporting requirement would also improve the Department’s ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment announced in Dear Colleague Letter GEN–23–09.¹¹ 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.

During negotiations, non-Federal negotiators proposed collecting student-level distance education information. While the Department did not take the proposal as written, this change would effectuate the intent of the proposal, and we would explain the details of this reporting in guidance pertaining to the operation of the Department’s systems.

The Department proposes to implement this provision no earlier than July 1, 2026, given the significant amount of change that would be required in Federal Student Aid (FSA)’s systems. This will also provide institutions with sufficient time to make any necessary changes to their own systems and prepare to report the additional information to the Department. Institutions already report information regarding distance education enrollment at the aggregate level for IPEDS, however the Department understands that this requirement may require institutions to update their systems for reporting distance education enrollment on a student-by-student basis.

B. Return of Title IV Funds

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

Current Regulations: Currently, under section § 668.21(a)(2)(ii), when a disbursement of title IV aid is made to a student, but the student does not begin attendance in the payment period or period of enrollment, the loan servicer issues a final demand letter, in accordance with 34 CFR 685.211, requiring the student to immediately return all Direct Loan funds directly received that are associated with the payment period or period of enrollment.

¹¹ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

Proposed Regulations: The Department proposes to amend § 668.21(a)(2)(ii) by removing “will issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate” and replacing it with “will initiate borrower repayment under the terms of their promissory note.”

Reasons: The Department believes the proposed change would help students repay loan amounts that were provided to them as credit balances. Because loan disbursement regulations permit a school to credit a student’s account 10 days before the start of classes, students who do not actually begin attendance can receive a loan disbursement. While the part of the disbursement credited to the school gets returned, the student must repay the funds they received directly. Currently, students who receive a loan disbursement but never start attendance receive a final demand letter from the servicer for any funds not credited to the school. That amount must be repaid in full immediately. If the student does not or cannot repay the loan funds, the loan will go into default. If students have spent those funds already on other necessary expenses, such as housing, they could be forced to turn to private lenders to repay their loans or end up in default. To help students repay these credit balances, the Department proposes, allowing students to repay the loan funds they received under the terms of their promissory note, rather than requiring immediate repayment in full. This would provide the student with a formal grace period and allow the student to repay over time pursuant to a repayment plan that best meets their needs.

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

Current Regulations: Current § 668.22 addresses treatment of title IV, HEA funds when a student withdraws.

Proposed Regulations: The Department proposes to add a new § 668.22(a)(2)(ii)(A)(6) that would establish that a student is not considered to have withdrawn if: (1) the institution’s records treat a student as having never attended courses for that payment period or period of enrollment; (2) the institution returns all the title IV aid disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for the payment period or period of enrollment; and (4) the institution writes off or cancels any current year balance owed by the student to the institution due to the institution’s

returning of title IV, HEA funds to the Department.

Reasons: Current R2T4 regulations under 34 CFR 668.22(a)(1) state that if a student begins attendance in the payment period, even if only for one day, an institution must determine the amount of title IV aid that the student earned as of their withdrawal date. If a student has not earned all disbursed aid, the unearned portion must be returned to the Department. This requires an institution to complete an R2T4 calculation for a student even if it has refunded 100 percent of that student's tuition and fees.

The Department proposes to change these requirements to allow a school to treat a student as having never attended during a payment period or period of enrollment if the institution: (1) Treats the student as never having begun attendance; (2) Returns all of a student's title IV, HEA funds for that period; (3) Refunds all the student's institutional charges for that period; and (4) Writes off or cancels any current year balance owed to the institution that results from the return of title IV funds. This would permit institutions that wish to maintain generous tuition refund policies to be exempt from performing an R2T4 calculation in cases where students are made financially whole after withdrawing. This would also result in these withdrawn students having greater Pell Grant lifetime eligibility and reduce the likelihood of these students owing a debt to the Department or the institution because the institution would be required to write off or cancel any current year balance owed to the institution that resulted from the return of title IV funds.

The proposed changes would address unique circumstances that currently constitute a withdrawal and may trigger return of funds by the school or student. While the Department does not have the authority to prohibit an institution from collecting a debt owed by a student, the Department seeks to incentivize institutions to not collect debts resulting from a student withdrawal by providing flexibility in conducting R2T4 calculations when certain conditions are met. The Department is aware that some institutions maintain policies that allow students to receive full tuition and fee refunds in certain circumstances, for example, if the student attended only a few days during a payment period or withdrew for medical reasons. These policies allow students who withdraw to avoid institutional debts and make it easier for those students to eventually re-enroll and complete their programs,

whether at the same institution or elsewhere.

Use of these generous tuition refund policies would be at the discretion of the institution. The Department, however, intends for the reduced burden resulting from this exemption from the R2T4 process to serve as encouragement for institutions to develop and maintain these generous refund policies for their students.

Current Regulations: Currently, under § 668.22(b)(2), an institution that is required to take attendance must document a student's withdrawal date and maintain the documentation as of the date of the institution's determination that the student withdrew.

Proposed Regulations: The Department proposes to amend § 668.22(b)(2) to require an institution to document a withdrawal date within 14 days of the student's last date of attendance. The Department also proposes to remove the cross-reference to paragraph (l)(3) at the end of the paragraph.

Reasons: The Department proposes to codify in regulation its longstanding sub-regulatory guidance requiring schools that are required to take attendance to determine the date that a student withdrew within 14 days from the student's last day of attendance. The Department believes that 14 days is an ample amount of time to document a student's withdrawal date when taking attendance, and therefore, we propose to codify the time frame in regulation.

Current paragraph (l)(3) defines the "date of the institution's determination that the student withdrew" for an institution that is not required to take attendance. Because the proposed provision in § 668.22 applies only to institutions that are required to take attendance, the Department proposes to remove the inapplicable cross-reference.

Current Regulations: Current § 668.22 treats some institutions as required to take attendance if certain conditions are met but does not specifically mandate that distance education courses be attendance-taking for purposes of the title IV return requirements.

Proposed Regulations: The Department proposes to add a new § 668.22(b)(3)(ii) that would require an institution to take attendance, for purposes of the title IV return calculation, for each course offered entirely through "distance education" as defined in the proposed changes to § 600.2, except for doctoral dissertation research courses.

Reasons: Accurate withdrawal dates are critical to the title IV return calculations to ensure that unearned

funds are returned. In the Department's experience, students in distance education courses generally do not formally withdraw, so it is critical that an institution establish an accurate withdrawal date. Under current regulations, when students withdraw without notification, a school that is not required to take attendance may use as a withdrawal date either the last date of a student's academically related activity that it has on record or the midpoint of the payment period. This can lead to institutions failing to report an accurate date, or using the date that allows the institution to keep the most money. From its compliance work on reviewing distance education, the Department has determined that institutions can often easily determine when students stop attending a distance education course, because institutional systems are already monitoring when students submit assignments or interact with instructors and students during lectures and course discussions. In fact, this monitoring is necessary for an institution to establish that it is meeting the distance education requirement of regular and substantive interaction. In addition, some institutions with online courses are already required to take attendance in certain situations described under 34 CFR 668.22(b)(3).

The Department believes it is illogical to not require an institution to use a student's actual last date of attendance as a withdrawal date when the institution already has the mechanism in place for making that determination. Consequently, to increase the accuracy of return calculations in distance education courses, the Department proposes to require institutions to take attendance in such courses for R2T4 purposes. Schools would be required to use actual attendance data to determine a withdrawal date for students enrolled entirely in online courses for a particular payment period or period of enrollment. Institutions will be able to document the withdrawal date by documenting "academic attendance" as required under § 668.22(b)(1). Under § 668.22(l)(7)(i), academic attendance must include academic engagement as defined in § 600.2. This would increase the accuracy of R2T4 calculations for such students, limit instances of inaccurate calculations and the potential for gaming R2T4 provisions by schools, and better protect student and taxpayer funds.

During negotiations the Department heard that dissertation research courses for doctoral candidates have a unique format and are structured in such a way that it would be difficult for an institution to meet an attendance-taking

requirement in an online setting. While we note that all distance education courses are still required to provide regular and substantive interaction, we believe that dissertation research courses are unique and are not as likely as other distance education courses to frequently produce data on academic engagement. For this reason, the Department proposes to distinguish any academic coursework offered entirely through distance education that occurs *prior* to the dissertation research portion of a doctoral program, where attendance-taking would be required, from the dissertation research coursework of such program, where attendance taking would not be required.

Current Regulations: Under § 668.22(d)(1)(vii), an institution does not have to treat an approved leave of absence as a withdrawal. A leave of absence is approved if several requirements are met, including if upon return from leave the student is permitted to complete the coursework he or she began prior to the leave of absence, but clock-hour, non-term credit hour program, and subscription-based programs are exempt from this requirement.

Proposed Regulations: We propose to add an “eligible prison education program” to the list of exceptions in § 668.22(d)(1)(vii) that includes clock-hour, non-term, and subscription-based programs.

Reasons: On July 1, 2023, the Department published final regulations that detailed Pell eligibility for confined or incarcerated individuals in PEPs.¹² These regulations did not address incarcerated students 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. In § 668.22(d), we propose to provide that an incarcerated student does not have to return from a leave of absence to where the student left off and, instead, may return to a different point in their PEP. This would apply to programs of any structure, including term-based programs. This change would increase flexibility for institutions and would help boost student retention in PEPs.

Current Regulations: Currently, under § 668.22(f)(1)(ii)(A), for clock-hour programs, the percentage of the payment period or period of enrollment

completed is determined 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 as of the student’s withdrawal date.

Proposed Regulations: In § 668.22(f)(1)(ii)(A), we propose to add that, for clock-hour programs, the institution would divide 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.

Reasons: The Department believes this change would increase accuracy and simplicity in performing R2T4 calculations. Currently, because the regulations are silent on a specific procedure, for an R2T4 calculation in a clock-hour program performed for a student who has withdrawn after successfully completing the first payment period of the program, an institution may use two methods to determine the percentage of the payment period completed: cumulative and by payment period. Both methods are based on “scheduled hours,” which are the hours a student was scheduled to complete within a payment period or period of enrollment as of their withdrawal date. This means an institution returns funds based on the amount of training that would have been completed, not necessarily how many hours the student actually attended. These methods differ significantly when a program contains two or more payment periods, which leads to widely varying calculations. The cumulative method considers the scheduled hours a student would have completed cumulatively across multiple payment periods, while the payment period method only considers the scheduled hours that have elapsed during a payment period since the student began attendance in that payment period.

The Department has observed that, when an institution uses the cumulative method, many times the percentage of funds earned by the institution is much larger than the time actually attended, because the institution is permitted to carry the student into the next payment period and use those additional scheduled hours. This results in a much smaller return of title IV funds, which ultimately hurts a student who had to withdraw from a program. The Department does not believe this is a desirable result. In addition, in its compliance efforts, the Department has seen this as an area of abuse in which

some institutions carry students who are not attending into a subsequent payment period to lower the amount of title IV aid they have to return.

To promote consistency across all calculations, the Department proposes to change how institutions determine the percentage of the payment period completed for a clock-hour program by using only the payment period method. Providing one consistent way to calculate the percentage of the payment period completed would simplify R2T4 policy, reduce complexity and confusion, ensure that students are treated consistently, and eliminate an area of potential abuse.

Current Regulations: Under § 668.22(l)(9), a student in a program offered in modules is scheduled to complete the days in a module if the student’s coursework in that module was used to determine the amount of the student’s eligibility for title IV, HEA funds from the payment period or period of enrollment.

Proposed Regulations: The Department proposes to revise § 668.22(l)(9) to provide that 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.

Reasons: In 2021 final regulations, the Department made several changes to R2T4 and modules.¹³ In response, the Department was asked how an institution determines whether the days in a module are included in the R2T4 calculation. The Department’s response was complex, and depended on whether the institution uses an R2T4 freeze date and the types of title IV, HEA aid the student was eligible for during the payment period or period of enrollment. An R2T4 freeze date is an optional policy that uses the student’s enrollment schedule at a fixed point to determine the number of days the student is scheduled to attend during the period for R2T4 purposes. The R2T4 freeze date can coincide with other dates—for example census dates or Pell recalculation dates—or the R2T4 freeze date can be a separate date. Currently, institutions may use multiple R2T4 freeze dates for multiple modules.

The “freeze date” concept is important under current requirements because without this date, schools would find it very difficult to determine the denominator of the R2T4 calculation using the exact coursework a student was scheduled to attend at the time of their withdrawal. Currently, regulations

¹² <https://www.federalregister.gov/documents/2022/10/28/2022-23078/pell-grants-for-prison-education-programs-determining-the-amount-of-federal-education-assistance>.

¹³ <https://www.federalregister.gov/documents/2020/09/02/2020/18636/distance-education-and-innovation>.

do not describe this concept; but sub-regulatory guidance outlines what schools should consider when determining the number of days in a period when R2T4 is required for a program offered in modules. Audit and program review findings show that schools often make errors in R2T4 calculations involving modules.

The Department proposes in § 668.22(l)(9) to simplify the determination by only including the days in a module in the denominator of the calculation if the student actually attends the module. The Department believes this will reduce complexity and errors. Institutions would no longer need to use a freeze date or differentiate between Pell and Direct loan recipients.

The change would provide consistency across title IV programs, simplify when and how to count scheduled days in a modular setting, and reduce burden for institutions and the Department by eliminating the need for a “freeze date” concept.

C. Federal TRIO Programs

Who is eligible to participate in a Talent Search project? (§ 643.3)

Current Regulations: Current § 643.3(a)(1)(i) through (v) allow individuals who are citizens or nationals of the United States, permanent residents of the United States, permanent residents of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or residents of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to participate in a Talent Search project. An individual is also currently eligible to participate in a Talent Search project if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

Proposed Regulations: The Department proposes to add a new paragraph § 643.3(a)(1)(vi) that would allow individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States to participate in a Talent Search project, if they do not

satisfy any of the other eligibility categories in this section.

Reasons: K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist their pathway into postsecondary education. This proposal would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as State educational agencies (SEAs) and local educational agencies (LEAs)) to spend funds on K–12 students without regard to immigration status, such as the Title I and Title IV programs under the Elementary and Secondary Education Act. Providing TRIO services to students without immigration status (students without status) previously ineligible will additionally eliminate the operational burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule, enabling a greater focus on delivering educational services to all students.

The Talent Search program focuses on completing high school and increasing postsecondary education attainment. The Department’s proposal to expand eligibility to all individuals who are enrolled in or seek to enroll in high school would align with the statutory goal of TRIO serving individuals from disadvantaged backgrounds in order to “prepare them for a program of postsecondary education.” This expansion of eligibility would also better enable grantees to serve students from groups that are traditionally underrepresented in postsecondary education, such as students from low-income backgrounds who would be first-generation college students, which is among the statutory goals of the Talent Search program (section 402B of the HEA). In addition, the Committee reached consensus on this provision.

Who is eligible to participate in an Educational Opportunity Centers project? (§ 644.3)

Current Regulations: Current § 644.3(a)(1)(i) through (v) allows individuals who are citizens or nationals of the United States, permanent residents of the United States, permanent residents of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or residents of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to participate in an

Educational Opportunity Centers project. An individual is also currently eligible to participate in an Educational Opportunity Centers project if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

Proposed Regulations: The Department proposes to add a new paragraph § 644.3(a)(1)(vi) that would allow individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States to participate in an Educational Opportunity Centers project, if they do not satisfy any of the other eligibility categories in this section.

Reasons: K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist in their achievement toward the path of postsecondary education. This proposal would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and LEAs) to spend funds on K–12 students without regard to immigration status. This provision, much like with the other two TRIO provisions addressed in this NPRM, would eliminate the administrative burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule.

Although the Educational Opportunity Centers program is primarily focused on increasing the number of adult participants who enroll in postsecondary education institutions, the program also supports high school seniors who are transitioning into college. The Department’s proposal to expand eligibility to individuals who are enrolled in or seek to enroll in high school would align with the statutory goal of TRIO serving individuals from disadvantaged backgrounds on the path toward postsecondary education. This expansion of eligibility would also better enable grantees to serve students from groups that are traditionally

underrepresented in postsecondary education such as students from low-income backgrounds who would be first generation college students, which is among the statutory goals of the Educational Opportunity Centers program (section 402F of the HEA). In addition, the Committee reached consensus on this provision.

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

Current Regulations: Section 645.3(a)(1) through (5) allows individuals who are citizens or nationals of the United States, permanent residents of the United States, permanent residents of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or residents of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to participate in an Upward Bound project. An individual is also currently eligible to participate in an Upward Bound project if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

Proposed Regulations: In new paragraph § 645.3(a)(6), the Department proposes to provide that individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States may participate in an Upward Bound project, if they do not satisfy any of the other eligibility categories in this section, but that such individuals are not eligible for a direct cash stipend.

Reasons: K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist in their path towards postsecondary education. This change would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and LEAs) to spend funds on K–12 students without regard to immigration status.

Although the Upward Bound program is primarily focused on preparing

participants for college, a precursor to enter college is obtaining a high school diploma. The Department proposes to expand eligibility to individuals who are enrolled in or seek to enroll in high school, without regard to their citizenship status, to align the eligibility requirements with the statutory goal of TRIO serving individuals from disadvantaged backgrounds on the path toward postsecondary education. This expansion of eligibility would also better enable grantees to serve students from groups that are traditionally underrepresented in postsecondary education such as students from low-income backgrounds and who would be first-generation college students, which is among the statutory goals of the Upward Bound program (section 402C of the HEA). In addition, the Committee reached consensus on this provision.

The Department's proposed expansion of student services for the Upward Bound program would not include providing direct cash stipends to individuals who do not meet the requirements of § 645.3(a)(1) through (5) because that would be contrary to Federal statute. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (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). PRWORA defines a "Federal public benefit" to include "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States." 8 U.S.C. 1611(c)(1)(B). As stated within the Department of Health and Human Services (HHS) Interpretation of "Federal Public Benefit," 63 FR 41658 (Aug. 4, 1998), these enumerated benefits exclude "non-postsecondary education programs, such as Head Start and elementary and secondary education." The 1998 HHS interpretation also contemplates that not all benefits or services provided under certain programs would be considered "Federal public benefits." *Id.* Therefore, the Department believes that TRIO grant programs providing student support services in the secondary context constitute the type of "incentive for illegal immigration provided by the availability of public benefits" that

PRWORA was enacted to discourage. 8 U.S.C. 1601(6).

However, in the context of Upward Bound, the Department has determined that direct cash stipends provided to program participants under § 645.42 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. Because an individual who fails to meet the requirements of current § 645.3(a)(1) through (5) would generally not be a "qualified alien," the Department proposes to clarify in § 645.3(a)(6) that individuals who qualify for program participation solely as a result of high school enrollment are not eligible for a direct cash stipend under this program.

X. Regulatory Impact Analysis

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

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 novel 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 proposed 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 benefits of \$1,434,537,761 over ten years at a 2 percent discount rate. This is equivalent to an annualized net benefits of \$159,702,107 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 proposed 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.

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 proposed 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 proposed regulations to the current regulations. In this regulatory impact analysis, the Department discusses the need for regulatory action, 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. Need for Regulatory Action

The Department has identified a significant need for regulatory action to address inequities and 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 only 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—such as College Scorecard program-level data, including debt, earnings, and completion—to students, families, institutions, and the public. This reporting requirement would also improve the Department’s ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment announced in Dear Colleague Letter GEN–23–09.¹⁴ 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.

Additionally, because of these limitations, students may be denied relief in the form of closed school discharges that they should be entitled to under the HEA in instances in which an institution ends either on-campus or online learning generally. In such cases, when an institution closes a program, it closes the entire modality through which it has provided students instruction. While some students may be satisfied learning under a different modality, others may have enrolled, at least in part, specifically to access learning through that particular modality. If an institution abruptly closes, under certain conditions, borrowers become eligible for discharges under the HEA. However, the Department is currently unable to provide relief to students whose institution remains open even though the modality of instruction they agreed to when they enrolled has ended.

The proposed regulations would create a “virtual location” for institutions that includes all students who are being instructed primarily through distance education. The proposed regulations also would change institutional reporting requirements to specify a student’s distance education status. These changes would enable 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. These provisions would also allow borrowers to receive closed school discharge if schools end either their online or on-campus operations. Finally, the additional reporting would allow 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.¹⁵

We further propose, with respect to distance education, revisions to the definition of a clock hour that would improve the integrity of the title IV, HEA programs and better align how programs award clock hours with the requirement in the HEA that distance

¹⁴ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

¹⁵ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

education support regular and substantive interaction between students and instructors. Under current regulations the definition of a clock hour includes asynchronous learning. Specifically, changes to the definition of a “clock hour” in § 600.2 that went into effect in 2020 provide that asynchronous learning may be offered in clock-hour programs if it involves “academic engagement in which the student interacts with technology that can monitor and document the amount of time that the student participates in the activity.” Though at the time the Department believed this change was appropriate because of a perceived need for greater institutional and student flexibility with regard to the time and place that coursework is completed, the Department’s enforcement experience since that time has shown that unintended consequences outweighed any benefits. First, the Department has found that the level of engagement necessary to meet the definition of a clock hour is difficult to monitor because it requires technical expertise that many clock-hour institutions are unable or unwilling to obtain. Through program reviews, the Department is also aware of instances in which clock-hour programs offered through distance education have not complied with the requirement to ensure that the technology used documents 50–60 minutes of instruction for each clock hour in a student’s program of study. Lack of such safeguards can contribute to an overall academic environment in which students do not receive the quality training necessary for obtaining a job post-completion.

Further, as a result of its enforcement efforts, the Department is concerned that asynchronous learning does not sufficiently meet the requirements of a clock-hour program. Through its program reviews, the Department has come to better understand that asynchronous instruction time that has been occurring in clock-hour programs is more similar to preparation in a correspondence course, where students essentially have to learn on their own, than time spent with an instructor in a class, lecture, recitation or in faculty-supervised laboratory, shop training, or internship. The Department is also concerned that asynchronous instruction may not provide the appropriate training for the types of occupations and fields for which clock-hour programs are designed to train students. Surveys and evaluations of job training programs that are typically offered in clock hours show that there are concerns generally that distance

education is not sufficient for these types of programs to provide learners with the type of “hands-on” experience that they need and expect.¹⁶ This survey data is consistent with information obtained from student interviews conducted during program reviews. While some students may prefer asynchronous instruction due to the need for flexible schedules, studies of technical programs have shown that students had greater clarity in understanding and confidence to solve exam questions after synchronous instruction.¹⁷ Students also had significantly higher exam scores in topics covered through synchronous instruction than those taught through asynchronous instruction.¹⁸

Finally, the use of asynchronous clock hours allows a student to receive credit for clock hours that do not involve regular and substantive interaction between the student and an instructor, which is a fundamental requirement in the HEA for all distance education programs. The Department remains concerned that as clock-hour programs increasingly shift toward the use of asynchronous clock hours, the likelihood that distance education programs offered using clock hours will not meet the statutory requirements for regular and substantive interaction. Eliminating the use of asynchronous clock hours for title IV, HEA purposes, while continuing to allow synchronous clock hours involving direct instruction provides greater assurance that the statutory requirements for distance education in clock hour programs are met.

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,

¹⁶ https://www.heldrich.rutgers.edu/sites/default/files/2022/06/Process_Evaluation_of_the_Integration_of_Title_IV_and_Title_II.pdf; <https://www.newamerica.org/education-policy/reports/five-things-policymakers-should-know-about-short-term-credentials/>.

¹⁷ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media__223.aspx.

¹⁸ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media__223.aspx.

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.

Final Demand Letter

Currently, when a disbursement of Direct Loan funds is made to a student, but the student does not begin attendance in the payment period or period of enrollment, the loan servicer issues a final demand letter requiring the student to immediately return all Direct Loan funds directly received associated with the payment period or period of enrollment. Some students may not be able to return all Direct Loan funds because they have already used those funds to pay for various noninstitutional educationally related expenses, such as housing. The Department believes there is a need to provide an alternative solution to the final demand letter. Therefore, the Department proposes that a student be able to repay their loans under the terms of their promissory note (e.g., through an income-driven repayment plan).

Withdrawal Exemption

For some institutions, the R2T4 process is filled with 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, the Department is proposing a withdrawal exemption in which an institution would 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 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 current year balance owed by the student to the institution due to the institution’s return of title IV funds to the Department.

The proposed withdrawal exemption would reduce the likelihood that a student owes money back to the school, allow the student to not exhaust annual and aggregate subsidized aid, including Pell Grants, and reduce the likelihood the student will have a loan balance

associated with a program they may not finish.

Last Date of Attendance

The Department's longstanding guidance has been that institutions required to take attendance must, within 14 days of a student's last date of attendance, document the student's withdrawal date. The Department believes that fourteen days is an ample amount of time to document a student's withdrawal date when taking attendance. Enforcement by the Department is hampered because it is not currently codified in regulation. Therefore, to support the Department's enforcement efforts, it is necessary to codify the time frame in regulation.

Attendance Taking and Distance Education

Accurate withdrawal dates are key to understanding if and how much aid needs to be repaid in the event of a student withdrawal. But students in distance education programs might not formally withdraw since they are not on campus. Currently, courses offered entirely through distance education are not required to take attendance unless the institution is required to do so under § 668.22(b)(2). However, the very nature of distance education requires regular and substantive interaction between the student and instructor, and for title IV, HEA purposes, institutions are required to monitor a student's academic engagement when a student is learning through distance education. To determine actual withdrawal dates and produce the most accurate R2T4 calculations, the Department believes it is necessary to require courses offered entirely through distance education to take attendance.

Leave of Absence

On July 1, 2023, the Department published final regulations that detailed Pell Grant eligibility for confined or incarcerated individuals in PEPs.¹⁹ These regulations did not address students who are incarcerated and who face involuntary interruptions to their academic programs. For example, an

¹⁹ <https://www.federalregister.gov/documents/2022/10/28/2022-23078/pell-grants-for-prison-education-programs-determining-the-amount-of-federal-education-assistance>.

entire correctional facility may be locked down due to a security issue, interrupting a student's progress in their PEP.

The Department proposes to make 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 would apply to programs of any structure, including term-based programs. This change would increase flexibility for institutions, and would 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 Significant Proposed Regulations 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. The Department believes it is necessary to streamline this calculation so that the payment period method is standardized across all clock-hour programs.

R2T4 and Modules

In 2021, the Department published final regulations outlining several changes to R2T4 and modules.²⁰ 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.

²⁰ Distance Education and Innovation—final regulations: <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

The Department believes it is necessary to simplify the determination by only including days in the module if the student actually attends the module. This change would reduce complexity and errors and institutions would no longer need to use a freeze date or differentiate between Pell Grant and Direct loan recipients.

Federal TRIO Programs

The TRIO programs are Federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds. TRIO programs serve and assist low-income individuals, first-generation college students, students with disabilities, students with limited English proficiency, students experiencing homelessness, and students in foster care to progress through the academic pipeline from middle school to postbaccalaureate programs. Limitations in the current regulations do not allow TRIO programs to reach all students in the geographic areas that the programs were meant to serve.

The Department proposes to expand participation in three TRIO programs that serve students in pre-postsecondary education to all disadvantaged individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States. K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all disadvantaged children who attend high school in the United States should have the same access to TRIO services to assist in their achievement toward the path of postsecondary education. This proposal would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and LEAs) to spend funds on K–12 students without regard to immigration status. The provisions in §§ 643.3, 644.3, and 645.3 would eliminate the administrative burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule.

2. Summary

Provision	Regulatory section	Description of proposed provision
Distance Education		
Definitions	§ 600.2	Would add virtual locations to the definition of “additional location”; remove from the definition of “clock hour” asynchronous distance education options; and add a definition of “distance education course.”
Academic year	§ 668.3	Would make conforming changes to reflect that asynchronous coursework via distance education can only occur in credit-hour programs.
Reporting information	§ 668.41	Would establish a requirement for institutions to report to the Department students’ enrollment in distance education and correspondence coursework.
R2T4		
Treatment of title IV grant and loan funds if the recipient does not begin attendance.	§ 668.21	Would allow a student who received a loan disbursement but never began attendance in a payment period or period of enrollment to repay loans funds they received under the terms of a promissory note.
Withdrawal Exemption	§ 668.22	Would exempt institutions from performing a return of title IV funds (R2T4) calculation in the event that (1) a student is treated as never having begun attendance; (2) the institution returns all tile IV aid disbursed to the student for that payment period or period of enrollments; (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 current year balance owed by the student to the institutions due to the institution’s return of title IV funds to the Department.
Last Date of Attendance	§ 668.22	Would codify that an institution that is required to take attendance must, within 14 days of a student’s last date of attendance, document the student’s withdrawal date.
Attendance Taking for Distance Education.	§ 668.22	Would require that an institution is required to take attendance for each course offered entirely through distance education, except for doctoral dissertation research courses.
Leave of Absence for Confined or Incarcerated Individuals.	§ 668.22	Would allow a confined or incarcerated individual, in a term-based setting, to not have to return from the leave of absence to where the student left off, and instead, the individual could return to a different point in their PEP.
Percentage of Payment Period Completed for Clock-Hour Programs.	§ 668.22	Would streamline how institutions determine the percentage of the payment period completed for a clock-hour program.
R2T4 and Modules	§ 668.22	Would modify the regulations to consider a module part of the payment period (the denominator of the R2T4 calculation) so long as a student attends the module.
Federal TRIO programs		
Talent Search program	§ 643.3(vi)	Would extend program eligibility to individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States.
Educational Opportunity Centers program	§ 644.3(vi)	Would extend program eligibility to individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States.
Upward Bound program	§ 645.3(6)	Would extend program eligibility to individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States. These individuals would not be eligible for direct cash stipends.

3. Discussion of Costs, Benefits, and Transfers

The Department has analyzed the costs and benefits of complying with the proposed regulations. Although many of the associated costs and benefits are not easily quantifiable, the Department currently believes that the benefits derived from the proposed regulations outweigh the associated costs, as discussed in sections 3.B. and 3.C. below.

The proposed regulations, which would apply to over 6,000 postsecondary institutions, would help ensure students are well served by the institutions of higher education they attend, increase access to postsecondary education for disadvantaged students, and ensure that the Federal Student Aid programs work in the best interests of students.

Due to the large number of affected recipients (6,003, as discussed more fully in the discussion of Establishing the Baseline (Section 3.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 proposed regulations. Despite these limitations and based on the best available evidence as explained in the discussion of Establishing a Baseline (Section 3.A), the Department estimates present value net benefits of \$148,421,308 over ten years at a 2 percent discount rate. This is equivalent to an annualized net benefit of \$16,523,227 over ten years. The proposed regulations are expected to result in estimated costs of \$128,216,509 in the first year following publication of the proposed regulations

and yield significant benefits beginning in year five as set forth in the below table.²¹

Year	Net annual costs
Year 1	\$128,216,509
Year 2	109,169,616
Year 3	55,133,908
Year 4	55,133,908
Year 5	(26,004,836)
Year 6	(52,009,672)
Year 7	(78,014,508)
Year 8	(104,019,344)
Year 9	(130,024,180)
Year 10	(156,029,016)
Total Net Present Value (NPV), 2 percent	(148,421,308)
Annualized, 2 percent ...	(16,523,227)

²¹ For this ten-year table, a positive figure indicates a cost while a negative figure indicates net benefits.

As discussed in the Cost Estimates section (Section 3.B), the Year 1 costs include one-time costs associated with reviewing and making necessary changes to policies, procedures, and training to implement the proposed regulations. In addition to these estimated costs, the Department estimates benefits, which arise from the expanded eligibility for TRIO programs and ensuing long-term benefits to TRIO participants that would result from the proposed rule.

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).

3.A. Establishing a Baseline

3.A.1. Number of Affected Entities

Institutions of higher education would be subject to the proposed 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 6,003 postsecondary institutions would be impacted by the proposed regulations. Among postsecondary institutions, institutions range from small, private, professional schools with fewer than 5 students enrolled in the fall of 2022 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 proposed 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.

3.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)²² 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, 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.

3.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.

The Department invites comment on all estimates provided herein to ensure that they accurately reflect realistic assumptions about average burdens the proposed regulations would impose on the full range of affected entities.

3.B. Costs of the Proposed Regulations

In this section, the Department estimates monetized cost burdens associated with the proposed 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 \$19,046,893, with no estimated costs in subsequent years. The Department estimates proposed changes would result in a total annualized cost of \$2,078,849.

The Department estimates that, upon promulgation of the proposed regulations, all affected entities would need time to read and understand the rule. Based on the Department’s administrative experience, we assume this would 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 6,003

IHEs. For loan servicers, we assume this would require, on average, six hours from an education administrator (business administrator (Business Operations Specialists loaded wage rate of \$85.70/hour)) and six hours from a lawyer (finance sector, loaded wage rate of \$197.84/hour) for each of the seven loan servicers. In total, the Department estimates that reading and understanding the proposed rule will have a one-time cumulative cost of approximately \$10,458,957 across all institutions of higher education.

Distance Education—Reporting and Disclosure of Information

As a result of proposed 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. At the IHE level, we assume this would require half an hour from the education administrator and 1 hour from an administrative assistant (loaded wage rate of \$43.58/hour) for each of the 3,732 IHEs that reported offering at least one distance education course. In total, the Department estimates reviewing and revising these procedures will cost approximately \$381,560 in the first year across all impacted IHEs.

Distance Education—Definition of Clock-Hour Program

The proposed changes to the definitions in § 600.2 would remove asynchronous learning from clock-hour programs offered through distance education. The Department believes that there are very few institutions with clock-hour programs that use distance learning to provide portions of the program, because there are few State or professional licensing boards that permit distance learning for clock-hour programs. Based on data available to the Department, there are approximately 8,000 clock-hour programs operating at approximately 1,700 institutions. The Department does not have data available on how many of these institutions or programs are offered through asynchronous learning to estimate costs, and requests comment on these effects.

Return of Title IV Funds When Student Does not Begin Attendance

Proposed changes to § 668.21 would allow students that do not begin attendance at an institution to repay any disbursed loan funds directly received according to the terms of their master promissory note. Under current regulations, borrowers in this situation would receive a demand letter from the

²² 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).

Department and be required to immediately repay the loan balance in full. The Department would require the Department’s seven loan servicers to update their policies and procedures to align with the proposed requirements. The Department estimates that the proposed change would require two hours from a lawyer and half an hour from a business administrator (Business Operations Specialists \$85.70/hour) for each loan servicer for a total first year cost of approximately \$2,719 across all loan servicers. The Department would ultimately realize these additional costs through increased contractual costs.

Return of Title IV Funds When Student Withdraws

The proposed addition of § 668.22(a)(2)(ii)(A)(6) would potentially incentivize institutions to not collect debts resulting from a student withdrawal by providing flexibility in conducting R2T4 calculations when certain conditions are met. The Department assumes that IHEs would need to review and revise their R2T4 policies and procedures. The Department estimates that the proposed change would require eight hours from an education administrators and two hours from a lawyer for each IHE for a total first year cost of approximately \$7,708,332 across all institutions.

Any institution that used the cumulative method to determine the percentage of the payment period completed for a clock-hour program would be required to update their procedures and policies to only use the payment period method. The Department does not believe that many institutions use the cumulative method, however, for those that do, the Department believes costs would be negligible because institutions would have until July 1, 2025, to update policies. For more information on both methods, please see the applicable “reasons” discussion in the Significant Proposed Regulations section.

Institutions that offer programs with modules would need to update their policies and procedures to account for adjustments in how to determine the denominator in R2T4 calculations. The Department believes this would result in overall cost savings because institutions would no longer need to navigate a complex set of Department rules to determine whether or not the days in a module should be included in an R2T4 calculation. However, the Department does not maintain comprehensive information on the use of modules at eligible postsecondary institutions and therefore cannot estimate the scope of these effects.

Institutions that currently participate in the Second Chance Pell experimental site and that offer eligible PEPs in a term-based setting would need to update policies and procedures to allow more flexibility when students return from a leave of absence. The Department believes the cost would be negligible.

Federal TRIO Programs—Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB) Participant eligibility

Proposed changes to §§ 643.3, 643.4, and 643.5 would expand eligibility for TS, EOC, and UB to any individual who is enrolled in or seeks to enroll in a high school located in the United States, territories, or Freely Associated States. The Department believes that these proposed changes would require current TS, EOC, and UB grantees to review and revise their participant recruitment and enrollment policies and procedures. At the grantee level, the Department assumes this would require two hours from an education administrator for each of the 2,111 grantees administering TS, EOC, or UB TRIO projects. In total, the Department estimates that revising project procedures would cost approximately \$495,325.

The proposed regulations would impose minimal additional costs to TRIO grant recipients under TS, EOC, and UB. While it would increase the number of students who are eligible to participate, the effect is only distributional as the funds provided from Congress and to grantees would be distributed across grantees. This could mean different or additional participants receive the benefits of TRIO services, but it would not affect the overall appropriations.

Eligible grantees that offer the Talent Search program, the Educational Opportunity Centers program, and the Upward Bound program would be required to update their applications to account for students who have enrolled in or who seek to enroll in a high school in the United States, territories, or Freely Associated States. The Department believe costs would be negligible because grantees already have an application process for students to participate in these programs, and we request comment on any costs in this area.

3.C. Benefits of the Proposed Regulations

The Department believes that these proposed regulations would likely have a wide range of benefits both for students, parents and caregivers, and the public at large. The discussion that follows discusses the benefits the

Department has attempted to quantify and monetize.

3.C.1. Monetized Benefits

In this section, the Department discusses monetizable benefits likely to result from the proposed regulations. In total, the Department estimates, after accounting for anticipated costs resulting from enrolling in postsecondary education, annualized benefits from the proposed regulations of \$17,664,756 over the next ten years.

Year	Annual costs and benefits ²³
Year 1 Cost	\$109,696,616
Year 2 Cost	109,696,616
Year 3 Cost	55,133,908
Year 4 Cost	55,133,908
Year 5 Benefit	(26,004,836)
Year 6 Benefit	(52,009,672)
Year 7 Benefit	(78,014,508)
Year 8 Benefit	(104,019,344)
Year 9 Benefit	(130,024,180)
Year 10 Benefit	(156,029,016)
Annualized, 2%	(17,664,756)
Total NPV, 2%	(158,675,187)

Federal TRIO Programs (TS, EOC, UB) Expanded Eligibility

Benefits arise from increased earnings from improved educational attainment of students without status previously ineligible to receive TRIO program services higher levels of educational attainment and associated higher wages. The Department believes expanding TS, EOC, and UB eligibility to students previously ineligible to receive TRIO program services would result in a net benefit to the public due to the capacity within TS, EOC, and UB projects to enroll additional participants.

The Department assumes that the approximately 500,000 elementary and secondary students without status previously ineligible to receive TRIO program services are evenly distributed across each high school grade level (*i.e.*, 1/4 of the population is currently in each of the 9th through 12th grades). According to data from the Migration Policy Institute,²⁴ only 78 percent of students without status graduate from high school within four years, compared with 87 percent of all public high school students. As a result, the Department estimates that, in the absence of the proposed regulations, approximately 98,000 students without status previously ineligible to receive TRIO

²³ For this ten-year table, a positive figure indicates a cost while a negative figure indicates net benefits.

²⁴ How Many Unauthorized Immigrants Graduate from U.S. High Schools Annually? (*migrationpolicy.org*).

program services would graduate from high school each year.

For the 2021–2022 reporting period, TS, UB, and EOC projects that did not meet their enrollment targets had the capacity to serve an additional 104,111

participants. According to data from the Migration Policy Institute, fifteen States (See Table 1 footnote) account for 81 percent of all high school graduates without status.²⁵ For the purpose of this analysis and to ensure that we do not

overstate the capacity of these TRIO programs to enroll students without status, the Department limits the pool of potential enrollees to TRIO projects operating in these fifteen States.

TABLE 1—2021–22 TS, UB, AND EOC PARTICIPATION RATES

Program	Funded to serve	Actual served	Capacity to serve additional students ²⁶	Capacity to serve additional students in 15 states ²⁷
TS	338,427	287,019	54,416	36,628
UB ²⁸	82,391	79,590	5,175	2,652
EOC	209,735	167,576	44,520	16,473
Total	630,553	534,185	104,111	55,753

For the purposes of this analysis, the Department assumes that TS, UB, and EOC projects could enroll a maximum

of 55,753 participants without status as a result of this proposed rule and

utilizes this figure as the universe of potential participants.

TABLE 2—SENSITIVITY ANALYSIS OF POTENTIAL NUMBER OF TRIO ENROLLMENTS RESULTING FROM PROPOSED RULE USING 2021–22 TS, UB, AND EOC PARTICIPATION RATES

Program	Capacity to serve additional students	Sensitivity analysis—potential number of TRIO enrollments resulting from proposed rule		
		1%	5%	10%
TS	36,628	366	1,831	3,663
UB	2,652	27	133	265
EOC	16,473	165	824	1,647
Total	55,753	558	2,788	5,575

The Department conducted a sensitivity analysis of the possible impact of the proposed rule on TS, UB, or EOC enrollment. We assume that 55,753 is the maximum number of students without status that could potentially enroll in TS, UB, or EOC as a result of the proposed rule. The Department assumes that there are a variety of reasons that a student that would be otherwise eligible as a result of the proposed rule would ultimately not enroll in TS, UB, or EOC. Therefore, the Department conducted a sensitivity analysis that analyzed program

enrollment rates of 1, 5, or 10 percent of the universe of eligible participants. As described below, the benefits of the rule grow as the size of the TRIO enrollment effect increases. For the purposes of this RIA we estimate that 5 percent, or 2,788 students without status, would enroll in TS, UB, or EOC as a result of this rule.

The Department therefore estimates that of the 55,753 estimated capacity of TS, UB, and EOC projects in States likely to serve students without status, 1,831 would enroll in TS, 133 would enroll in UB (including UBMS), and 824

would enroll in EOC. In total, the Department estimates that this proposed rule would result in 2,788 additional high school students without status previously ineligible to receive TRIO services enrolling in TS, UB, or EOC. For the purposes of this analysis the Department assumes that the 2,788 included as part of this analysis are students that would not have otherwise graduated from postsecondary education. The Department invites comments on this assumption.

TABLE 3—ESTIMATED ADDITIONAL TRIO PROGRAM PARTICIPANTS BASED ON PROPOSED RULE

Program	TRIO program participants	Postsecondary enrollment rate	Postsecondary enrollees
TS	1831	68	1245
UB	133	75	99
EOC	824	57	469

²⁵ How Many Unauthorized Immigrants Graduate from U.S. High Schools Annually? (*migrationpolicy.org*)

²⁶ This calculation of additional capacity excludes projects that met or exceeded their enrollment goals ('funded to serve' column figures).

²⁷ California, Texas, Florida, New York, New Jersey, Illinois, Georgia, North Carolina, Virginia,

Arizona, Maryland, Washington, Colorado, Nevada, and Massachusetts.

²⁸ Includes Upward Bound Math & Science.

TABLE 3—ESTIMATED ADDITIONAL TRIO PROGRAM PARTICIPANTS BASED ON PROPOSED RULE—Continued

Program	TRIO program participants	Postsecondary enrollment rate	Postsecondary enrollees
Total	2,788	1,813

According to data from NCES,²⁹ in 2020, approximately 43 percent of high school completers immediately enrolled in a 4-year college or university and an additional 20 percent immediately enrolled in a 2-year program. In comparison, according to data from TRIO performance reports for 2022, 68 percent of TS participants enrolled in college, 75 percent of UB (including UBMS and VUB) participants enrolled in college, and 57 percent of EOC participants enrolled in college. EOC enrollment rates are typically lower than TS and UB as EOC participants include adults who are not connected to formal education systems.³⁰ Therefore, the Department estimates that a total of 1,813 students without status would enroll in postsecondary education as a result of their participation in TS, UB, or EOC.

For those 1,813 additional students that would enroll in postsecondary education, the Department assumes that

these students would earn at least some college credit from a 2- or 4-year institution. Among the 2012 UB cohort, 35 percent of UB participants that enrolled in postsecondary education earned a degree at a 4-year IHE while 7 percent of UB participants earned a degree at a 2-year IHE. For the purposes of this analysis, and due to lack of data, the Department assumes that postsecondary graduation rates are comparable between TS, UB, and EOC. We request comment on this assumption. Therefore, we assume that 58 percent of UB participants did not complete a bachelor’s degree, associate’s degree, or certificate within six years of initial enrollment. For our analysis we identify those that did not complete a degree or certificate as earning some college credit.

TABLE 4—ESTIMATED ADDITIONAL POSTSECONDARY COMPLETERS BASED ON PROPOSED RULE

Postsecondary completers	Estimated completers
Some College	1,052
Certificate/Associate’s Degree	126
Bachelor’s Degree	635
Total	1,813

For several analyses, the Department relies on estimated wages by educational attainment. For these analyses, the Department relies on data from BLS³¹ regarding earnings differences across individuals with different educational attainment. The relevant data are reproduced in Table 5. Estimated Weekly Earnings of Postsecondary Enrollees by Highest Level of Attainment, below for easier reference.

TABLE 5—ESTIMATED WEEKLY EARNINGS OF POSTSECONDARY ENROLLEES BY HIGHEST LEVEL OF EDUCATIONAL ATTAINMENT

Highest education attainment	Individuals	Median usual weekly earnings	Unemployment rate (%)	Total estimated weekly earnings ³²
HS Diploma	0	899	3.9	n/a
Some College	1,052	992	3.3	1,008,864
Certificate/Associate’s Degree	126	1,058	2.7	130,134
Bachelor’s Degree	635	1,493	2.2	927,153
Total	1,813	n/a	n/a	2,066,151

The Department estimates that these proposed regulations would directly result in an additional 1,813 students enrolling in and completing at least some postsecondary education. In addition, the Department assumes that affected individuals would have average earnings and employment rates equal to those at high school diploma level in the baseline, and average earnings and employment rates equal to their new educational attainment level following

implementation of the rule. The Department estimates that the total weekly earnings of these students if they had only earned a high school diploma would be \$1,566,058. These students’ enrollment in postsecondary education would result in total weekly earnings of \$2,066,151, an increase of \$500,093 per week

Based on the earnings and unemployment information described in Earnings and unemployment rates by

educational attainment from the U.S. Bureau of Labor Statistics,³³ the Department estimates that the additional 1,813 students enrolled in postsecondary education could annually earn, in total, \$26,004,836 more than they would have had they not enrolled in postsecondary education. We request comment on the assumptions leading to this result. The Department assumes that these benefits would not accrue until Year 5 and then would annually

²⁹ Instit. of Educ. Sci., Nat’l Ctr. for Educ. Statistics, *Postsecondary Education, Immediate College Enrollment Rate*, <https://nces.ed.gov/programs/coe/indicator/cpa> (last updated May 2023).

³⁰ According 2018–2019 data, 36% of EOC participants were between the age of 19 and 27 and 37% of EOC participants were 28 years or older.

³¹ Earnings and unemployment rates by educational attainment, 2023. “Education pays”: U.S. Bureau of Labor Statistics (*bls.gov*).

³² This total is calculated by subtracting the unemployment rate from the number of individuals and multiplying that figure by the median weekly earnings. IE. (1052–35) * \$992 = 1,008,864.

³³ Earnings and unemployment rates by educational attainment, 2023. “Education pays”: U.S. Bureau of Labor Statistics (*bls.gov*).

compound in future years as additional cohorts of students without status previously ineligible to receive TRIO services graduate at higher rates. To the extent that additional individuals complete postsecondary education before Year 5, this assumption will underestimate actual benefits from the proposed regulations.

The Department estimates that the benefits of the proposed rule described above would outweigh costs resulting from lost wages from delaying entry into the workforce and tuition costs.

Under the proposed changes to §§ 643.3, 643.4, and 643.5, the Department estimates that newly eligible recipients that enroll postsecondary education would realize an opportunity cost from the loss of wages they would otherwise receive as a high school graduate immediately entering into the workforce. The Department estimates that an additional

1,813 students without status would enroll in postsecondary education each year as a result of the proposed rule. The Department assumes that of these students, 1,742 would find employment and earn a median wage of \$899 per week as a high school graduate for total weekly earnings of \$1,566,058. The Department estimates that annual costs of \$81,435,016 during the first two years after the implementation of the proposed rule to account for students enrolled in both four-year and two-year postsecondary education. The Department assumes for the purposes of this analysis that 50 percent of these students are enrolled at a four-year IHE and therefore will realize an opportunity cost of \$40,717,508 in years three and four. The Department requests comment on these assumptions.

In addition, under the proposed changes to §§ 643.3, 643.4, and 643.5,

the Department estimates that newly eligible recipients that enroll postsecondary education would realize postsecondary tuition costs. Due to a lack of available data, the Department assumes that the 1,813 students without status estimated to enroll in postsecondary education each year as a result of the proposed rule will be equally divided across four-year public IHEs, four-year private nonprofit IHEs, two-year public IHEs, and two-year private nonprofit IHEs. The Department requests comment on these assumptions. Based on NCES data,³⁴ the Department assumes that the average net price to enrolled students of \$11,000 for students at four-year public IHEs, \$20,800 for students at four-year private nonprofit IHEs,³⁵ \$8,300 for students at two-year public IHEs, and 21,100 for students at two-year private IHEs.

Type of IHE	Students	Net price to student	Total
Four-year public IHE	454	11,000	4,994,000
Four-year private nonprofit IHE	453	20,800	9,422,400
Two-year public IHE	453	8,300	3,759,900
Two-year private IHE	453	21,100	9,558,300
Total	1,813	27,734,600

The Department estimates that annual costs of \$27,734,600 during the first two years after the implementation of the proposed rule to account for students enrolled in both four-year and two-year postsecondary education. The Department assumes for the purposes of this analysis that 50 percent of these students are enrolled at a four-year IHE and therefore will realize tuition costs of \$14,416,400 in years three and four. The Department requests comment on these assumptions.

3.C.2 Non-Monetized Benefits

Distance Education

Changes proposed to provide better data on student outcomes for students enrolled in distance education would 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.

Students can also benefit from the change to only allow synchronous instruction in clock-hour programs offered through distance education. Because studies have shown better student outcomes when comparing synchronous and asynchronous instruction, students would likely have greater persistence and completion, and would also likely benefit from improved labor market outcomes.³⁶

R2T4

Benefits to Students

Students would benefit from these regulations under several of the proposed regulations. If institutions choose to implement the optional withdrawal exemption, students who withdraw would not owe any balance related to any returned title IV, HEA aid to the Department or the institution. This would 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.

If a school chooses not to implement the optional withdrawal exemption, students that received a Direct Loan but

did not begin attendance in their program would be able to repay their loans under the terms of a promissory note as opposed to the current practice of receiving a demand letter for the full payment. Students would be able to benefit from an income-driven repayment plan, or standard payment plans with payments that could potentially be paid over 30 years.

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 proposed regulations would benefit incarcerated students 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 would benefit under several of these proposed regulations. Currently, an institution offering clock-

³⁴ Price of Attending an Undergraduate Institution (ed.gov).

³⁵ Average net price of attendance is calculated as the average total cost of attendance minus average grant and scholarship aid.

³⁶ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_.223.aspx.

hour programs may use two methods to determine the percentage of the payment period completed: cumulative, and by payment period. The proposed regulations would require institutions to use the payment period method when calculating the number of scheduled hours completed in clock-hour programs. This change would 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. The proposed regulations would benefit institutions through the requirement that the student actually attend the module for the days in the module to be included in the payment period. It would also eliminate the need for a “freeze date” (explained in the discussion section), further reducing complexity.

Benefits to the Taxpayer

Overall, we believe that the more accurate calculations and reductions in complexity would 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,³⁷ 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 proposed changes would also help alleviate some compliance issues related to R2T4.

For example, we have proposed a requirement that schools that offer distance education courses entirely online begin taking attendance for those courses. As a result, we anticipate more accurate calculations through the use of actual withdrawal dates from attendance records, thus providing taxpayers a more accurate accounting of title IV, HEA funds returned.

TRIO

As discussed above, the proposed changes to TRIO would align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and

LEAs) to spend funds on K–12 students without regard to immigration status. This would eliminate the administrative burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule.

4. Accounting Statement

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

Provision	Annualized benefits
	2% discount rate
TRIO Expanded eligibility—Postsecondary earnings	\$17,664,756
	Annualized costs
	2% discount rate
Reading and Understanding the New Rule	\$1,141,529
Distance Education—Reporting and disclosure of information	41,645
R2T4—Student does not begin attendance	297
R2T4—Student withdrawal	841,316
TRIO Expanded Eligibility	35,105,062

5. Alternatives Considered

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, financial aid administrators, accrediting agencies, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

5.1 Distance Education

During negotiations there was no disagreement with the Department’s proposal to amend the definition of “additional location” to separately identify virtual locations and to define “distance education course” (which was based on a negotiator suggestion), so there was little discussion on these topics.

The negotiators also did not disagree with the general idea of requiring

institutions to report students’ enrollment in distance education. There were suggestions about what that reporting should entail, including more detailed data about the extent of students’ enrollment in distance education and not just whether they are in-person or distance education students. The discussion settled on reporting students as having one of three statuses: fully in-person, fully at a distance, or a hybrid of the two. This would be a simple determination for schools that would also provide sufficient information for the Department. Because specific details about this reporting are yet to be determined, the proposed regulation establishes the general requirement and notes that reporting will be in accordance with procedures to be established by the Secretary.

Some negotiators disagreed with the proposed elimination of asynchronous distance education in the definition of clock-hour programs in § 600.2. Negotiators representing various institutional sectors contended that instruction in clock-hour programs need not be entirely hands-on, that there is a didactic component that lends itself to asynchronous instruction, and that schools have been able to master the technology necessary for close accounting of student academic engagement. These negotiators suggested limiting the amount of a clock-hour program that can occur asynchronously to 50 percent. Based on our review of clock-hour programs that delivered substandard education with little direct instructor interaction, we disagree that schools have the technology and resources to adequately monitor student academic engagement, as discussed in the section above on the proposed revisions to distance education. Allowing 50 percent of instruction to be asynchronous would still permit substandard education to occur. We thus reaffirmed that elimination of asynchronous distance education in clock-hour programs would be appropriate.

5.2 R2T4

Confined or Incarcerated Individuals and R2T4

The Department initially proposed 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

³⁷ Annual Top Ten School Findings and School Fine Reports: <https://studentaid.gov/data-center/school/fines-and-findings>.

requirements for a targeted group of students. In addition, the Department heard concerns from several negotiators that confined or incarcerated individuals may reach their Pell grant lifetime eligibility used (LEU) faster under this proposal without obtaining an academic credential. And finally, the Department heard from some additional negotiators that some postsecondary institutions have already established policies that account for involuntary breaks in PEPs, such as waiving all charges related to the affected payment period, and our initial proposal might have caused institutions to revise or remove beneficial student policies already in place.

To address the negotiators' concerns, the Department instead proposed a new condition under the leave of absence provisions (§ 668.22(d)), targeted at confined or incarcerated individuals that take a break from their PEP due to events at their correctional facility, which would give students and institutions, especially in term-based settings, more flexibility when students return from a leave of absence. In term-based settings, the proposal would allow a confined or incarcerated individual to not have to come back from the leave of absence resuming where the student left off, and instead, the individual could resume at a different point in their PEP. The postsecondary institution would still have to adhere to all other requirements of a leave of absence as we propose they remain unchanged.

Direct Assessment Programs and R2T4

The Department considered exempting direct assessment programs offered through distance education from the proposed requirement under § 668.22(b)(3)(i)(D) that would require an institution to take attendance for each course offered entirely through distance education. A negotiator stated three concerns: (1) requiring an R2T4 calculation that is artificially based on dates of attendance, in a program structure that is not designed around seat time, would disincentivize progression and punish students who complete program requirements more quickly than anticipated; (2) requiring attendance in direct assessment programs would not increase the accuracy of R2T4 calculations, because the amount of funds earned by these students is not correlated to time and an attendance-based calculation does not accurately reflect the actual amount of coursework completion for students who take advantage of self-paced instruction; and (3) to offset these negative effects, institutions may feel

compelled to add pedagogically unnecessary content or participation requirements to courses in order to increase the frequency of attendance-taking opportunities. The negotiator argued that doing so would undermine the advantages of self-paced direct assessment programs and could unnecessarily increase program length and cost.

The Department is not persuaded by these arguments, because all distance education courses are still required to provide regular and substantive interaction. Direct assessment programs offered through distance education do not pose unique attendance-based challenges that justify exemption from the requirement. Direct assessment programs, like all other programs, are required to determine a withdrawal date, which is the last date of academic attendance as determined by the institution's academic records. The Department believes that institutions that offer direct assessment programs through distance education already have systems in place that sufficiently monitor academic engagement and thus can easily determine attendance and, by extension, a student's withdrawal date.

Withdrawal Exemptions and R2T4

As part of our 2019 negotiated rulemaking, the Department adopted a withdrawal exemption for programs offered in modules that treat a student as not withdrawn if the student successfully completes one or more modules that make up 49 percent or more of the number of days in the payment period. The Department's initial proposal with negotiators suggested removing the 49 percent withdrawal exemption, which, for students that do not qualify for another withdrawal exemption, would mean that more money would be returned to the Department and students would not exhaust their aid eligibility as quickly. The Department also believed that removing the 49 percent withdrawal exemption would 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.

Many negotiators disagreed with the elimination of the 49 percent withdrawal exemption. Negotiators stated that their institutions had already updated systems and policies to account for the exemption and that it was serving students well. Negotiators also pointed out that the exemption has only been in regulation since 2021 and,

instead of eliminating the exemption, the Department should provide more guidance and training to assist those institutions that may be having some difficulty implementing this regulatory requirement. In light of these negotiator concerns and suggestions, the Department decided to retain this exemption.

5.3 TRIO

Expanding the Eligibility Proposal to All TRIO Programs

The current proposal for the Upward Bound Program, the Educational Opportunity Centers, and the Talent Search program would allow an individual to participate in these programs if they are enrolled in, or seek to enroll in, high school in the United States. All of these three TRIO programs serve students at the secondary school level. The Department also considered, at the suggestion of a negotiator, expanding the eligibility proposal to Student Support Services and the McNair Scholars Program, which are postsecondary level TRIO programs.

The Department determined to limit eligibility expansion to the three identified secondary school programs based on our belief that all children who attend high school in the United States should have the same access to public TRIO services to assist in their path toward postsecondary education. This proposal also aligns TRIO with the treatment of students in other Federal K–12 spending programs, which allow recipients (such as State education agencies and local education agencies) to spend funds on K–12 students without regard to immigration status.

The TRIO programs have limited resources, with the TRIO programs currently serving less than 10 percent of the eligible population. The Department is proposing to expand eligible participants to focus on the most vulnerable population: children who do not yet have the basic education that comes from high school completion, which is a necessary step toward postsecondary education.

Not Regulating TRIO

The Department considered not regulating, but as noted in the previous section, K–12 public schools are open to students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist their pathway into postsecondary education.

6. Regulatory Flexibility Act

This section considers the effects that the proposed 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 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 Initial Regulatory Flexibility Analysis.

Description of the Reasons for Agency Action

The Secretary is proposing new regulations to ensure students are well served by the institutions of higher education they attend, increase access to postsecondary education for disadvantaged students, and ensure that Federal Student Aid programs work in the best interests of students. Proposed regulations for distance education would help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by requiring additional reporting of programs offered entirely through online education, requiring students’ distance education enrollment status, and disallowing asynchronous distance education in clock-hour programs for title IV, HEA purposes. The proposed R2T4 regulations would help withdrawn students repay outstanding Direct Loan credit balances, increase the accuracy and simplicity of performing R2TV calculations, add additional clarity to institutions on reporting, and codify longstanding policies. The proposed TRIO regulations would expand student eligibility and provide greater access to postsecondary education for disadvantaged students who have enrolled or seek to enroll in a high school in the United States, territories, or Freely Associated States.

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

Through the proposed regulations, the Department aims to address inequities and inadequate protections for students to ensure the Federal Student Aid programs work to accomplish postsecondary access and completion. This includes ensure the Department, students, and families have the information needed to answer important questions about enrollment in and success with distance education, the ability provide closed school discharges where a program closes, that students that withdraw are able to repay their debt, and that disadvantaged students have the opportunity to access and succeed in postsecondary education.

The Department’s authority to the proposed regulations stems primarily from multiple statutory enactments: first, 20 U.S.C. 1070–1099d (sections 400–499 of the HEA) which authorizes the Federal government’s major student financial aid programs; second, 20 U.S.C. 1070(b) (section 400(b) of the HEA) which outline the Secretary’s broad authority to carry out program requirements; and 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). The specific statutory sources of this authority are detailed in the Authority for This Regulatory Action section above.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply as noted above, SBA defines small proprietary institutions of higher education (IHEs) based on revenue. These regulations apply, however, to all IHEs, which cannot be compared across institutions and sectors using the SBA revenue size standard because the RFA does not measure non-profit and public sector IHEs based on revenue. As a result, for purposes of the proposed regulations, the Department defines “small entities” by reference to enrollment, as it has done in other rulemakings, to allow meaningful comparison of regulatory impact across all types of IHEs in the for-profit, non-profit, and public sectors.³⁸ The

³⁸ 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,

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 the proposed regulations in particular. Since enrollment data is 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 the proposed 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 IHEs. 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 the proposed 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.³⁹ As a result

³⁹ 84 FR 31392. The Department notes that the alternative size standards that are used in this NPRM 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.

³⁹ 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

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 proposed regulations, “Pell Grants 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.⁴⁰ 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. In accordance with

section 601 of the RFA, the Department seeks comment on the appropriateness of this alternative size standard as it relates to this rule.

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 IHEs UNDER ENROLLMENT-BASED DEFINITION

	4-year	2-year	Less than 2-year	Total
Not Small	1,548	639	84	2,271
Small	1,219	936	1,577	3,732
Total	2,767	1,575	1,661	6,003

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 2,334 private for-profit IHEs that were identified using 2022 IPEDS data.⁴¹ The enrollment size standard identifies 2,073 for-profit IHEs as small, and the revenue size standard identifies 2,044 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 127 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 proposed alternative size standard covers for-profit IHEs that would not otherwise be covered (and the revenue standard covers for-profit

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.

⁴⁰In 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.

⁴¹ 2022 IPEDS downloaded from <https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx>.

IHEs that would not be covered by the enrollment standard), the Department proposes to treat 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.

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	50
Four or more years	27
Total	127

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 would see a minimum net increase in costs of approximately \$3,361 in year 1 for all IHEs, as explained in more detail in the 3.B. COSTS OF THE PROPOSED REGULATIONS section of this Regulatory Impact Analysis and included in the table below:

TABLE 6—ESTIMATED NET INCREASE IN COSTS

Category	Year 1	
Reading and Understanding the New Rule	\$1,740	Total cost of \$10,458,957 divided by the total institutions effected
Distance Education—Reporting and Disclosure of Information	102	Total cost of \$381,560 divided by the total institutions offering distance education
Return of Title IV Funds When Student Withdraws	1,284	Total cost of \$7,708,332 divided by the total institutions effected
TRIO Expanded Eligibility	235	Total cost of \$495,325 divided by total grantees impacted
Total	3,361	

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

\$8,691,634.⁴² Therefore, the Department estimates that the proposed regulations could generate a net cost for small IHEs equal to approximately 0.04 of annual revenue.

⁴² 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	431	\$4,282,808	0.08
Private for-profit, 4-year or above	238	9,747,215	0.03
Private for-profit, less-than 2-year	1,304	1,751,544	0.19
Private not-for-profit, 2-year	121	3,980,612	0.08
Private not-for-profit, 4-year or above	821	14,778,833	0.02
Private not-for-profit, less-than 2-year	55	1,907,257	0.18
Public, 2-year	365	23,541,752	0.01
Public, 4-year or above	109	33,836,210	0.01
Public, less-than 2-year	218	4,215,979	0.08
Grand Total	3,662	8,691,634	0.04

According to data from IPEDS, approximately 458 small IHEs had total reported annual revenues of less than \$597,100 for which the costs estimated above will potentially exceed 1 percent of total revenues. The average enrollment across these 458 small IHEs was 48 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 in the Regulatory Impact Analysis above, “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 proposed changes. For example, under distance education, the Department considered exempting direct assessment programs offered through distance education from the proposed requirement under § 668.22(b)(3)(i)(D) that would require an institution to take attendance for each course offered entirely through distance education. However, the Department rejected this consideration in part because it ultimately would not reduce burden including to small entities since all distance education courses are still required to provide regular and substantive interaction and believes that institutions that offer direct assessment programs through distance education already have systems in place to monitor academic engagement.

Similarly, 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, however, disagreed 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.

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.

Proposed §§ 668.22 and 668.41 contain information collection requirements. Under the PRA, the Department has or will at the required time submit a copy of these sections and Information Collection requests 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 the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

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

Requirements: Proposed § 668.22(b)(3)(ii) would require institutions to take attendance in distance education courses, which would require schools to use actual attendance data to determine a student’s withdrawal date for students enrolled entirely in online courses for a particular payment period or period of enrollment. The requirement would not apply to dissertation research courses that are part of a doctoral program. The Department believes that this change would improve Return of title IV funds (R2T4) calculations, limit instances of inaccurate calculations by schools, and better protect student and taxpayer funds. Regarding distance education courses, institutions can often easily determine when students stop attending because a school’s systems can often identify when students submit assignments or interact with instructors and students during lectures and course discussions, and students are often continuously monitored to track academic engagement. Also, some institutions with online courses are already required to take attendance in certain situations as described under 34 CFR 668.22(b)(3).

Burden Calculation: The proposed regulatory change would add a burden for institutions. The Award Year 2022 IPEDS reporting has 3,732 institutions offering one or more distance education courses. The Department estimates that each of the institutions would be required to do an initial review of their distance education system to ensure that attendance is being collected and potentially develop or add attendance

taking to the system. The Department expects that this would require an average of 10 hours per institution as a one-time burden. The Department estimates it would take 684 Proprietary institutions 6,840 hours to perform this review function (684 institutions × 10 hours = 6,840 hours). The Department estimates it would take 1,414 Private institutions 14,140 hours to perform this review function (1,414 × 10 hours = 14,140). The Department estimates it would take 1,634 Public institutions 16,340 hours to perform this review function (1,634 × 10 hours = 16,340).

Due to the highly automated delivery of these types of courses, and the availability of such coursework on a daily basis, the Department estimates half of the institutions offering distance education courses would already be performing this task. Therefore, the Department estimates it would take the remaining fifty percent of institutions offering distance education about 10 minutes on a daily basis to capture attendance information for their records. The Department estimates it would take 342 Proprietary institutions 21,221 hours annually to perform this

recordkeeping function (684/2 institutions × 365 days × .17 (10 minutes) = 21,221 hours). The Department estimates it would take 707 Private institutions 43,869 hours annually to perform this recordkeeping function (1,414/2 × 365 × .17 (10 minutes) = 43,869). The Department estimates it would take 817 Public institutions 50,695 hours annually to perform this recordkeeping function (1,634/2 × 365 × .17 (10 minutes) = 50,695). The total estimated burden to be added to OMB Control Number 1845–0022 is 153,105 hours.

STUDENT ASSISTANCE GENERAL PROVISIONS—1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost \$49.33 per entity
Proprietary	684	125,514	28,061	\$1,384,249
Private non-profit	1,414	259,469	58,009	2,861,584
Public	1,634	299,839	67,035	3,306,836
Total	3,732	684,822	153,105	7,552,669

Section 668.41 Reporting and disclosure of information.
Requirements: The Department proposes adding a new paragraph § 668.41(h) that would require institutions to report their enrollment in distance education or correspondence courses. The Department expects that this provision would be implemented no earlier than July 1, 2026. This change would 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 would improve 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 proposed regulatory change would add a burden for institutions. Because we expect to delay implementation of this new requirement until at least July 1, 2026, we are not estimating the implementation burden 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 proposed regulations involving information collections, the information being collected and the collections that the Department would 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 number and estimated burden	Estimated cost \$49.33 per entity
§ 668.22	Proposed § 668.22(b)(3)(ii) would require institutions with distance education courses to take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program.	1845–0022; 153,105 hours	\$7,552,669
§ 668.41	The Department proposes adding a new paragraph (h) that would require institutions to report their enrollment in distance education or correspondence courses. The Department plans to implement this provision no earlier than July 1, 2026.	None—will develop closer to implementation.

TOTAL BURDEN HOURS AND CHANGE IN BURDEN HOURS ASSOCIATED WITH EACH OMB CONTROL NUMBER AFFECTED BY THE PROPOSED REGULATIONS IN 1845–0022

Control No.	Total burden hours	Change in burden hours
1845–0022	2,738,785	+153,105
Total	2,738,785	+153,105

The Department has prepared the Information Collection Request for the information collection requirement. If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification.

In preparing your comments, you may want to review the Information Collection Request, including the supporting materials, in www.regulations.gov by using the Docket ID number specified in this notification Docket ED–2024–OPE–0050. This proposed collection is identified as proposed collection, 1845–0022.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at www.regulations.gov.

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 proposed Federal financial assistance.

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

Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would 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. The proposed 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, audiotope, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or in Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available at no cost to the user at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

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 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 A. Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600, 643, 644, 645, 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. Section 600.2 is amended by:
 - a. In the definition of *Additional location*, adding paragraph (3).
 - b. In the definition of *Clock hour*, revising paragraph (1)(iv).
 - c. Adding, in alphabetical order, a definition of *Distance education course*.

The revision and additions read as follows:

§ 600.2 Definitions.

* * * * *
 Additional location:
 * * * * *

(3) A virtual location through which the institution offers 100 percent of an educational program through distance education or correspondence courses, notwithstanding requirements for students to complete on-campus or residential periods of 90 days or less.

* * * * *

Clock hour:

(1) * * *

(iv) In distance education, 50 to 60 minutes in a 60-minute period of attendance in a synchronous class, lecture, or recitation where there is opportunity for direct interaction between the instructor and students.

* * * * *

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, academic support services, or residency experiences.

* * * * *

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. Section 643.3 is amended by:

■ a. Removing the word “or” at the end of paragraph (a)(1)(iv).

■ b. Removing the period at the end of paragraph (a)(1)(v) and adding, in its place, “; or”.

■ c. Adding paragraph (a)(1)(vi).

The addition reads as follows:

§ 643.3 Who is eligible to participate in a project?

(a) * * *

(1) * * *

(vi) If an individual does not meet the requirements of paragraph (a)(1)(i) through (v) of this section, then the individual is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

* * * * *

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. Section 644.3 is amended by:

■ a. Removing the word “or” at the end of paragraph (a)(1)(iv).

■ b. Removing the period at the end of paragraph (a)(1)(v) and adding, in its place, “; or”.

■ c. Adding paragraph (a)(1)(vi).

The addition reads as follows:

§ 644.3 Who is eligible to participate in a project?

(a) * * *

(1) * * *

(vi) If an individual does not meet the requirements of paragraph (a)(1)(i)

through (v) of this section, then the individual is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

* * * * *

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. Section 645.3 is amended by:

■ a. Removing the periods at the end of paragraphs (a)(1) through (4) and adding semicolons in their place.

■ b. Removing the period at the end of paragraph (a)(5) and adding, in its place, “; or”.

■ c. Adding paragraph (a)(6).

The addition reads as follows:

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

* * * * *

(a) * * *

(6) If an individual does not meet the requirements of paragraph (a)(1) through (5) of this section, then the individual is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States, and provided that such individual is not eligible for a direct cash stipend.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 9. 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.

§ 668.3 [Amended]

■ 10. Section 668.3 is amended by:

■ a. Adding “credit-hour” before “program” in paragraph (b)(2)(ii)(A).

■ b. Removing “program” and adding, in its place, “credit-hour program offered” in paragraph (b)(2)(ii)(B).

■ 11. Section 668.21 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

(a) * * *

(2) * * *

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, including funds that are disbursed directly to the student by the lender for a study-abroad

program in accordance with § 682.207(b)(1)(v)(C)(1) or for a student enrolled in a foreign school in accordance with § 682.207(b)(1)(v)(D), the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will initiate borrower repayment under the terms of their promissory note; and

* * * * *

■ 12. Section 668.22 is amended 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. Redesignating paragraphs (b)(3)(ii) through (iv) as paragraphs (b)(3)(iii) through (v).

■ f. Adding a new paragraph (b)(3)(ii).

■ g. Revising paragraphs (d)(1)(vii), (f)(1)(ii)(A), and (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 disbursed to the student 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 current year 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.

(3) * * *

(ii) An institution must take attendance for each course offered entirely through distance education as defined in 34 CFR 600.2, except for dissertation research courses that are part of a doctoral program.

* * * * *

(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.

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

§ 668.41 Reporting and disclosure of information.

* * * * *

(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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