

## U.S. Department of Education provides COVID-19 guidance for colleges and universities

9 March 2020

On 5 March 2020, the U.S. Department of Education (ED) published an [electronic announcement](#) to provide guidance on compliance with federal student financial aid (Title IV) requirements in connection with students for whom COVID-19 affects their educational programs and activities. In addition to the electronic announcement, ED has created a [webpage](#) to provide additional information regarding COVID-19 responses. The webpage includes [additional guidance](#) from the Centers for Disease Control that outlines COVID-19 response plans for colleges and universities. This advisory summarizes the electronic announcement.

The electronic announcement generally identifies three sets of rules: (1) rules where ED is providing some flexibility to institution in connection with COVID-19 circumstances, (2) rules where ED is not providing flexibility but rather is explaining how the rule would apply in terms of COVID-19 circumstances, and (3) rules for which ED lacks waiver authority. In addition, although ED encourages other regulators – such as accreditors, state education agencies, and National Council of State Authorization of Reciprocity Agreements – to be flexible with their requirements, ED ultimately does not itself have authority to waive those regulators’ rules. ED recommends that institutions document, as contemporaneously as possible, any actions taken as a result of COVID-19, including with respect to actions described in the electronic announcement. While the spirit of the electronic announcement is tolerance and accommodation with respect to compliance obligations, in certain respects it lacks precision and warrants cautious consideration to the extent an institution seeks to follow it. Institutions may email ED at [COVID-19@ed.gov](mailto:COVID-19@ed.gov) for additional guidance.

The electronic announcement identifies five COVID-19 situations that may prompt questions related to Title IV compliance:

- A student was enrolled or was supposed to begin a travel-abroad experience and either the student has been called back to the U.S. or was never able to begin the travel abroad experience;
- A student was enrolled in a program and met the requirements for full-time enrollment; however, due to COVID-19, one or more classes – such as an internship, a clinical rotation, student teaching or fieldwork – have been cancelled and now the student has

fallen below the 12 credit hour minimum and is no longer considered to be a full-time student;

- A student is quarantined and misses class or a student is incapacitated due to COVID-19 illness;
- A campus temporarily stops offering ground-based classes in order to prevent the spread of COVID-19;
- A foreign school that serves U.S. students who participate in Title IV programs temporarily suspends operations due to COVID-19.

Here are areas where the electronic announcement either identifies flexibility with Title IV rules or explains how Title IV rules would apply in certain situations related to COVID-19.

- Distance Education. Here are selected aspects of ED's guidance with respect to distance education:
  - ED is providing broad approval to institutions to use online technologies to accommodate students on a temporary basis, without the need to obtain ED approval where such approval would otherwise be required. This flexibility applies only to a program during a payment period that overlaps with 5 March, the date of the electronic announcement, or the following payment period.
  - ED is permitting accreditors to waive their distance education approval requirements for institutions that seek to use online courses as a temporary way to serve students for whom COVID-19 interrupts their enrollment. This flexibility applies only with respect to students who were in attendance when the interruption occurred, and the flexibility is not available for clock-hour courses that lead to licensure if the relevant body will not accept distance education for purposes of licensure requirements.
  - Institutions are not required to use “sophisticated learning management systems or online platforms” for Title IV purposes. Nevertheless, to meet ED's distance-education definition, the institution must communicate with students through certain technologies and instructors must initiate substantive communications with students, either individually or collectively, on a regular basis. ED acknowledges that accreditors may have standards related to distance education, but it is permitting accreditors to waive those standards to address COVID-19.
- Leaves of absence. ED will permit students who wish to take a leave of absence for COVID-19-related concerns or limitations, to take such leave even if the student notifies the institution in writing after the leave of absence has begun. The electronic announcement provides guidance on how to address leaves of absence.
- Academic calendar. The electronic announcement indicates that institutions may offer courses on a non-standard term schedule to students who have been recalled from study abroad or experiential learning programs after the term began, if doing so enable those students to complete the term.
- Federal Work Study (FWS). The electronic announcement addresses matters related to the FWS program. For example, the guidance indicates that with respect to a FWS student enrolled at a campus that closes due to COVID-19 or who is employed by an employer that closes as a result of COVID-19, the institution may continue to pay FWS wages to the

student if (1) the closure occurs after the beginning of the term, (2) the institution continues to pay other employees (including as faculty and staff), and (3) the institution continues to meet FWS institutional wage share requirements.

- Academic year length. ED regulations define “academic year” for federal student financial aid purposes and that definition includes a length requirement depending on the nature of the program. The guidance notes that ED has regulatory authority to approve a reduced academic year.
- Professional judgment. Under the Higher Education Act, financial aid administrators have authority to use professional judgment to make adjustments on a case-by-case basis to the cost of attendance or to the data elements used to calculate a student’s expected family contribution. The guidance notes that financial aid administrators may use professional judgment where students and/or families have been affected by COVID-19, subject to compliance with normal rules related to substantiation and documentation.
- Satisfactory Academic Progress (SAP). Under ED regulations, an institution’s SAP appeal policy must explain that the bases on which a student may file an appeal, including a relative’s death, a student’s injury or illness, or other special circumstances. The guidance indicates that circumstances related to COVID-19 may form the basis for a student’s SAP appeal even if not specifically articulated in the institution’s SAP policy.
- Students who did not begin attendance. The electronic announcement explains how to handle Title IV rules with respect to students who are unable to begin attendance due to COVID-19 circumstances.
- National Student Loan Data System (NSLDS) Enrollment Reporting. ED indicates that an institution may defer reporting a student’s withdrawn status to the NSLDS when the institution closes and has a reasonable expectation that (1) it will reopen at the start of a payment period that begins no later than 90 days following the closure and (2) the student will resume attendance when the institution reopens.

The electronic announcement identifies the following areas where ED has no authority to waive applicable Title IV requirements:

- Enrollment status. ED has no authority to waive the requirement that institutions award and disburse federal student financial aid based on a student’s enrollment status and institutions must follow rules related to enrollment status changes.
- Return to Title IV Funds (known as R2T4). ED has no authority to waive R2T4 rules. The guidance explains how to apply those rules where an institution closes as a result of COVID-19, such as how to define a student’s withdrawal date, how to identify the date of determination of withdrawal and the timeframe for returns, and how to address certain withdrawal scenarios.
- Foreign school. For foreign schools that participate in the Title IV programs, ED has no authority to waive the bar on such schools providing distance education to Title IV recipients.

We are available to respond to questions.

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