

## ED releases further proposed rules to foster distance education and innovation

13 April 2020

On 2 April 2020, the United States Department of Education (ED) formally released [proposed rules](#) on distance education and other topics upon which consensus was reached in its 2019 negotiated rulemaking process. The proposed rules cover topics that were addressed in the negotiated rulemaking process but were not included in ED's two prior rule packages concerning state authorization, professional licensure, accreditation, substantive change, school closures, and faith-based institutions. We addressed some of these changes in prior advisories related to [state authorization requirements](#) and [accreditation changes](#).

Over the past several years, ED has pursued a flurry of new regulatory activity. Much of this activity has been directed at amending, revising, or rescinding Obama-era regulations, such as Gainful Employment and Borrower Defense to Repayment rules, but ED has also sought to reform or "right-size" many other regulations under Title IV of the Higher Education Act with the [stated goals of updating its rules and promoting innovation](#). Presumably, ED now seeks to tie up loose ends in view of the growing importance of distance education in the current COVID-19 climate and thereafter, and perhaps also in view of the upcoming presidential election.

The latest proposed rule changes cover a variety of topics and reflect the consensus reached by the negotiators. Proposed changes of note include:

- **Distance and correspondence education:** ED would amend the definitions of "distance education" and "correspondence course" to account for changes in distance education technology and the types of programs offered by institutions. ED would also, among other things, amend the definitions of "clock hour" and "credit hour" to provide greater flexibility to distance education and other educational programs that emphasize demonstration of learning rather than seat time.
- **Competency-based education:** ED would clarify the eligibility requirements for direct assessment programs. The proposed rules modify the requirement for ED approval of direct assessment programs by only requiring approval for the first direct assessment program at each credential level.
- **Regular and substantive interaction:** ED would, among other things, refine the much debated requirements of "regular and substantive" interaction between students and instructors for a course to be considered "distance education" and not a "correspondence course."

- **Incarcerated students:** ED would clarify the Pell Grant eligibility requirements for incarcerated students.
- **Foreign schools:** ED would allow students enrolled in Title IV-eligible foreign institutions more flexibility, especially to take courses at other institutions. (The rules around foreign institutions are also a topic addressed in the recent Coronavirus Aid, Relief, and Economic Security Act and ED's COVID-19 guidance).
- **Changes of ownership:** Of interest to education investors, ED would modify the regulations regarding financial responsibility to clarify requirements when there is an institutional change of ownership or control. In particular, an institution would not be financially responsible if a "person" who exercises substantial ownership or control over an institution also exercised substantial ownership or control over another institution that closed without executing a "viable" teach-out plan or agreement approved by an institution's accreditor.

ED has afforded a short period to comment on the proposed rules that ends on 4 May 2020. If ED publishes the final rule by 1 November 2020, then the regulations would become effective on 1 July 2021.

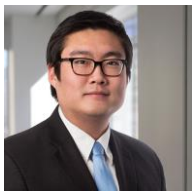
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