



higher learning

ADVOCATES[®]

Gregory Martin
U.S. Department of Education, OPE
400 Maryland Avenue, S.W., Suite 268-32
Washington, DC 20202

Dear Mr. Martin,

On behalf of Higher Learning Advocates, a bipartisan non-profit organization that advocates for solutions to break down systemic barriers and support the success of today's students in their pursuit of education and skills development beyond high school, I am writing to comment on the U.S. Department of Education's (The Department) Notice of Proposed Rulemaking (NPRM) related to distance education and innovation (Docket ID ED-2018-OPE-0076) under the Higher Education Act of 1965 (HEA).

As students and colleges are facing unexpected transitions to online learning, the quality of distance education has never been more important in terms of equity and student success. Rethinking regulations represents an opportunity to strengthen and grow innovative delivery models—such as competency-based education—that can serve today's students well, strengthen the workforce, and improve outcomes. It is also an opportunity to ensure that quality and student success are at the center of policymaking, and that there are guardrails to protect the interests of today's students.

While some emergency flexibilities are needed and have been granted during the current COVID-19 emergency, a pandemic is an exceedingly rare occasion, which must not overshadow the need for clear safeguards for students in the long-term. [The Competency Based Education Network \(C-BEN\) Quality Framework](#) provides a strong and helpful guide to ensuring quality in this space. While this important C-BEN resource is helpful for the field, it is not a substitute for the strong regulatory and statutory quality frameworks that are needed. It is critical that these rules provide for the regulatory guardrails necessary to ensure quality and certainty in outcomes in higher education.

Competency-Based Education (CBE) and distance-education have both grown significantly in the current regulatory environment. According to the Integrated Postsecondary Education Data System (IPEDS), distance-education enrollment has [increased](#) from 1.3 million in 1997-98 to almost 6.3 million in fall 2016. In 2007-08, 20 percent of undergraduate students were enrolled in online education and just a few years later, in fall 2017, [one in three](#) students were enrolled online. Over 600 colleges are offering or working to offer CBE programs, according to a recent [survey](#). As recently as a 2015 [scan](#), only 52 institutions were cited doing so.

Unfortunately, under the current regulatory regime, there are too few protections against low-quality higher education programs. [Studies have found](#) negative effects of online delivery, especially for less academically prepared students. Additionally, research shows severe equity

gaps in online education success, with the biggest gap in outcomes found in [a study of online versus in-person learning](#) in California's community colleges was for African American and Latino students. Federal rules should provide much-needed clarity and rigor to colleges about how to comply with federal law and how to best protect their students.

Higher Learning Advocates believes that as the Department updates these regulations, they should be strengthened in the following ways:

Procedural Concerns

- *Public comment period.* The Department has published these regulations for a 30-day comment period only, in the middle of a pandemic that has created new issues in the distance learning space as institutions are forced to transition their classes to online platforms. These rules would not go into effect until next year at the earliest, so we do not see an immediate benefit from publishing these regulations during a crisis, where those most likely to be affected (students and institutions) are the least likely to have the time and capacity to thoughtfully provide comments on these rules. We urge the Department to reopen the comment period on this NPRM once the current pandemic begins to subside.

600.2 Definitions

- *Credit Hour.* The credit hour rule helps create a common language for awarding taxpayer dollars to students and programs, as colleges and the Department determine students' enrollment intensity and assess program eligibility with this measure. While the credit hour may be an imperfect measure, we do not yet have a replacement and the absence of a replacement is an invitation to "inflate" credit hours, charging students more for work and learning than it is received.

Members of the competency-based education community, who would seemingly have the most to gain by eliminating or weakening the existing credit hour regulations, strongly disagreed with the Department's initial proposal to effectively strike the existing regulatory definition during the negotiated rulemaking process. They were worried about the potential impact this would have on students and institutions that were trying to innovate responsibly. Instead, the Department reached a compromise with negotiators that preserves the credit hour rule.

We support the consensus language the Department agreed to in the NPRM, with a recommendation to improve upon it by ensuring accreditors create standards for its application. To accomplish this, we urge that you add in the requirements (34 CFR 602.24(f) and 603.24(c)) eliminated in the accreditation rule last year that required accrediting agencies to create standards around the credit hour. If accreditors are not assessing institutions' policy, this rule will be nearly impossible to enforce. An institution may opt to exercise the flexibilities already in the definition if it believes the time-based metric is inaccurate to represent its students' workloads.

- *Distance-Education.* We support the Department’s proposed language on this issue and urge the Department not to further change the definitions of regular and substantive interaction, including the definition of an instructor.

Regular and substantive interaction requirements exist in law because of a long [history](#) of abuse in correspondence education programs, particularly of veterans seeking to use their education benefits. Following a demonstration project testing federal aid for distance-education programs, the Bush Administration specifically [urged](#) Congress to implement “quality standards for electronically-delivered education [that] emphasize the importance of interaction between the instructor and student.” Congress followed the recommendation and created regular and substantive interaction requirements as effectively the sole statutory distinction between correspondence courses (on which Congress has placed additional limitations) and distance-education courses.

The Department originally proposed changes during negotiations language that would undermine the qualifications of an instructor, limit requirements for such interaction to reactive outreach from instructors, and/or include non-academic content in substantive interactions. The language in the NPRM reflects a hard-fought compromise among negotiators, and the Department should not diverge from the proposed definition in its final rule.

If the requirement for regular and substantive interaction is eliminated or significantly weakened, there is a strong risk that inequities will grow between those who have access to real, meaningful, substantive interaction with instructors and those who do not. Within the framework of a demonstration project for CBE, there could be more flexibility that could test new definitions and approaches with appropriate safeguards for students, but without the construct of experimentation and strong quality frameworks, the risk for abuse is too great.

We remain concerned about the variability of the definition of the term “instructor” among accreditors. Every accreditor should have a strong definition of a quality instructor, including that they are academically qualified to teach in the relevant competencies. Further, in an instance of multiple instructors, students must be made aware of who is the instructor of record.

600.10 Data, Extent, Duration, and Consequence of Eligibility; and 668.10 Direct Assessment Programs

- *Direct Assessment.* We strongly oppose the Department’s proposed change to require institutions to seek approval for direct assessment programs from the Department only the first time they offer such a program. Direct assessment programs have access to a separate financing model from other types of credit- or clock-hour-based programs. The HEA requires that each new eligible direct assessment program be approved by the Secretary first. (20 USC 1088(b)(4))

The Department's proposed regulations instead allow for institutions to obtain approval only for their first direct assessment programs, by credential level. (34 CFR 600.10(c)(1)(iii) and 668.10(b)(1)). Higher Learning Advocates believes this structure will reduce the assurances that students and the public have over the quality and value of these programs.

Subscription

- Higher Learning Advocates supports the language regarding subscription in the NPRM but asks for clarity on the ability for institutions not under direct assessment to use this model. The Department approved experimental sites in this area, and while those have ended, institutions are still operating in this manner and need further clarification about what authority they are operating under.

In closing, we hope you strongly consider our views and concerns on these important topics as you continue to improve and update these regulations. Thank you for your continued work to strengthen and grow innovative delivery models for today's students, and for the opportunity to comment on this NPRM.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Peller', with a long horizontal flourish extending to the right.

Julie Peller

Executive Director