Prior to Congressional changes in 2006, schools that offered primarily distance education courses had their participation in federal assistance programs limited in a number of ways. These limits were removed for the most part and currently apply only to “correspondence courses.” Correspondence courses are not considered to be “distance education.”

Congress passed the legislation eliminating the restrictions on the broader range of distance education courses despite a U.S. General Accounting Office (GAO, now the Government Accountability Office) study showing that eliminating the restrictions with no additional monitoring would trigger increased risk of fraud and abuse and could lead to substantial cost increases. In October 2011, the Department issued an “urgent call to action,” recommending immediate steps that institutions can take to detect and prevent distance-education fraud. The letter referenced a September 2011 Inspector General report about distance-education “fraud rings.” According to the report, fraud rings generally target schools with relatively low tuitions and involve ringleaders who identify information from straw students (including some incarcerated students), complete multiple financial aid applications using the information collected, apply for admission under open admissions programs, and participate in the amount of online interaction necessary to establish participation and secure federal aid disbursements. The ringleader then distributes funds to the straw students, who give a portion of the proceeds to the ringleaders. The GAO also found significant variation in accrediting agencies’ oversight of distance education programs. This is particularly troubling since the accrediting agencies are given substantial flexibility by the Department to determine standards and monitor schools. Further concerns about distance and online education are discussed in Chapter 13 infra.

Distance education courses are now generally treated the same way as traditional residential programs. “Distance education” is generally defined as education that uses one or more of the following technologies to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include:

1. The internet;
2. One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communication devices;
3. Audio conferencing; or
4. Video cassettes, DVDs, and CD-ROMs, if they are used in a course in conjunction with any of the technologies listed above.

These courses are eligible for federal financial aid if the program is offered by an institution (other than a foreign institution) that has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association that is recognized by the Secretary and has accreditation of distance education within the scope of its recognition. The eligibility requirements for schools that offer distance education in states in which those schools are not physically located are discussed in Chapter 13 infra.

Schools are, however, limited in correspondence course offerings. Correspondence courses are defined as courses provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced. If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

A school does not qualify as eligible if for the latest complete award year:

1. More than 50% of the school’s courses were correspondence courses, or
2. 50% or more of the school’s regular enrolled students were enrolled in correspondence courses.

This limit may be waived for a school for good cause in some cases.

In July 2018, the Department announced its intention to conduct negotiated rulemaking to revise various regulations related to its oversight of schools participating in the federal student aid program. This includes, among other things, the definition of “regular and substantive interaction”—which is used in the definitions of “correspondence course” and “distance education”—and state authorization requirements related to programs offered through distance education or correspondence courses. As of March 2019, that rulemaking is ongoing.
Footnotes

260 [260] 34 C.F.R. § 600.2.


262 [262] U.S. Dep’t of Educ., Dear Colleague Letter, GEN-11-17, Fraud in Postsecondary Distance Education Programs—URGENT CALL TO ACTION (Oct. 20, 2011).


264 [264] Id.

265 [265] See § 13.2.3.2 [2], infra.

266 [266] Id.

267 [267] 34 C.F.R. § 668.8(m) (referring to the prior term “telecommunications”). Distance education is defined at 34 C.F.R. § 600.2.

268 [268] See § 13.2.3.2 [2], infra.

269 [269] 34 C.F.R. § 600.2.


271 [271] Id.


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