

**Powers Update Regarding COVID-19 Guidance for Postsecondary Institutions
March 25, 2020**

This article has been revised to include additional and updated guidance from the U.S. Department of Education. [Please click here to view the most recent version.](#)

The spread of the 2019 novel coronavirus (“COVID-19”) has had an unprecedented impact on higher education institutions across the country. Schools are closing campuses, sending students home, and transitioning their academic programs from brick-and-mortar sites to distance education delivery methods. This article provides links to, and briefly summarizes, recent guidance issued by federal agencies and potential legislation designed to ease the burden on higher education institutions. All affected schools should remember to document any changes to their programs and to communicate the changes to their accreditors. Institutions should also promptly alert students to any changes in programs, the academic calendar, or method of instruction.

U.S. Department of Education

To assist institutions in making changes to their operations, the U.S. Department of Education (“ED” or “Department”) published an electronic announcement titled “[Guidance for interruptions of study related to Coronavirus \(COVID-19\)](#)” on March 5, 2020 covering multiple scenarios that have arisen for schools and students. On March 20, 2020, the Department supplemented the Guidance with [additional frequently asked questions \(“3/20 FAQs”\)](#). The guidance touches on several aspects of the Title IV programs, including the following:

- *Approval to Offer Distance Education:* The Department provided broad approval for institutions to offer distance education on a temporary basis to students currently in attendance without going through the regular approval process.
 - Accreditors encouraged to waive distance education review process.
 - Temporary approval is effective as of March 5 and for enrollment in payment periods that begin on or before June 1, 2020
 - Flexibility does not apply to clock-hour programs that lead to licensure if the applicable licensing agency does not accept distance learning hours.
 - 3/20 FAQs clarify that institutions may offer a clock hour program via distance education format if they ensure each clock hour is supervised by qualified institutional personnel. Institutions must ensure clock hour programs offered via distance education comply with applicable requirements of accreditors, state agencies, and education prerequisites for state licensure.
 - Institutions may enter into consortium agreements and accreditors may waive requirements related to the percentage or number of credits earned in residence at the home institution.

- Students may be granted an approved leave of absence (LOA) for COVID-19 related concerns even if the request in writing is provided after the LOA begins.
 - 3/20 FAQs clarify that if clock hour student coursework is cancelled (e.g., clinicals), the institution can put the student on an approved LOA until the coursework can resume or the institution can find another placement for the student if the institution reasonably expects to resume coursework or find another placement within 180 days.
- *Foreign Schools*: Students receiving online instruction from a foreign school via distance education can receive Title IV funds if they are enrolled at a domestic institution and are receiving the instruction via a consortium agreement. Otherwise, the Department cannot extend temporary distance education flexibility for U.S. students enrolled in foreign institutions.
- *Federal Work Study (FWS)*: An institution can continue to pay FWS to enrolled students if the campus or student employer closes or moves classes online (provided the change occurred after the beginning of the term), the institution continues to pay essential faculty and/or staff (i.e., an institution need not continue to pay all employees), and the institution meets institutional wage share requirements.
- *Academic Year*: If an institution closes for a period due to a campus health emergency, it can contact the case team to request a temporary reduction in academic year length.
- *Professional Judgement*: Financial aid administrators may use professional judgement to adjust cost of attendance where students have been affected by COVID-19 so long as this determination is made on a case-by-case basis and documentation is retained in the student file.
- *Satisfactory Academic Progress (SAP)*: A student may file a SAP appeal because of COVID-19, even if similar special circumstances are not stated in the institution's SAP policy.
- *Students Who Did Not Begin Attendance*: Institutions need not return Title IV loan funds disbursed as a credit balance as long as the institution was not aware a student would not attend prior to disbursement. Institutions should not notify the loan servicer of a student who did not begin attendance.
- *Enrollment Status Changes*: The Department cannot waive the requirement to disburse Title IV funds based on actual enrollment status.
- *Return of Title IV Funds (R2T4)*: The Department cannot waive the R2T4 requirements, but provides clarification regarding the withdrawal date, date of determination, and scenarios involving an institution closing and reopening in the same payment period.
 - 3/20 FAQs clarify that institutions should treat days classes were suspended as days included in a "scheduled break" and if additional days added to scheduled breaks equal five days or more, these additional days should be excluded from the R2T4 calculations performed after the change was made.
- *NSLDS Enrollment Reporting*: Notwithstanding the R2T4 requirements, an institution that temporarily closes should continue to report a student's most recent enrollment status (rather than "withdrawn") if the institution reasonably expects to reopen at the start of a payment period beginning no later than 90 days following its closure and reasonably expects the student to resume attendance when the institution reopens.

- *Waivers of Institutional Charges:* The 3/20 FAQs clarify that institutions that waive all or a portion of tuition, fees, or other institutional charges of a current payment period need not re-evaluate cost of attendance or make changes to Title IV awards on the basis of such changes.
- *Common Origination and Disbursement (COD) Loan Periods:* The 3/20 FAQs clarify that institutions that extend their terms that begin on or before June 1, 2020 as a result of COVID-19 need not change loan period end dates in COD if the loan period was scheduled to end on the term end date.
- *Overlapping Terms:* The 3/20 FAQs clarify that if an institution offering instruction in standard terms extends a current term length in response to COVID-19, and this extension causes the term to overlap with a subsequent scheduled term, the institution may still consider these terms to be standard terms.

Audits

The Department's Office of the Inspector General issued [Dear CPA Letter, CPA-20-01](#). This CPA Letter provides for an exemption from the Department's site visit requirement for audits conducted using the [Guide for Audits of Proprietary Schools and for Compliance Attestation Engagements of Third-Party Servicers Administering Title IV Programs \(September 2016\)](#). The exemption applies to proprietary school audits of fiscal years ending between September 30, 2019 and December 31, 2019. For such audits, auditors must document how the alternative procedures achieved the intent of the site visit requirement.

Student Privacy

On March 12, 2020, the Department's Student Privacy Policy Office ("SPPO") [released guidance](#) to assist school officials working with public health officials during COVID-19 while also protecting the privacy of students' education records. SPPO's guidance document discusses the applicability of the Family Educational Rights and Privacy Act ("FERPA") to situations schools may face during the COVID-19 outbreak. Under FERPA's health or safety exception, if an institution determines that (1) there is an articulable and significant threat to the health or safety of the student or another individual and (2) certain parties need the personally identifiable information from education records to protect the health or safety of the student or another individual, then the institution may disclose that information to appropriate parties without first obtaining consent. The guidance document reiterates SPPO's longstanding position that the media are not "appropriate parties" because they generally do not have a role in protecting individual students or other individuals at the institution.

As in other areas discussed in this article, institutions must ensure they document compliance with FERPA. Specifically, if an institution uses the health or safety exception to make a disclosure, the institution must record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed.

On March 20, 2020, the SPPO released [FERPA and Virtual Learning Related Resources](#). The guidance provides links to relevant sections of the Department's [Security Best Practices Portal](#),

including the [FSA Cyber Security Page](#), and previous guidance documents including “[Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices](#)” and “[Protecting Student Privacy While Using Online Educational Services: Model Terms of Service](#)”.

Civil Rights

On March 17, 2020, the Department’s Office for Civil Rights (“OCR”) released a [webinar](#) for schools utilizing online learning during the COVID-19 outbreak regarding accessibility for students with disabilities. OCR reminds institutions that, under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, a person with a disability must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same programs and activities as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. As institutions move programs to a distance modality, OCR recommends that institutions assess whether their online learning systems are sufficiently accessible by employing both automated checkers and manual testing.

In addition, OCR published a [Fact Sheet](#) for education leaders on how to protect students’ civil rights as school leaders take steps to keep students safe and secure. OCR confirms that school officials have discretion to make educational decisions based on local health needs and concerns. As school leaders respond to evolving conditions related to COVID-19, OCR instructs them to be mindful of the requirements of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and Title VI of the Civil Rights Act, to ensure that all students are able to study and learn in an environment that is safe and free from discrimination

Congress Responds to COVID-19

On Capitol Hill, Congress has sought to assist with many of the COVID-19-related issues facing higher education institutions. Senators Patty Murray (D-Wash.), Kirsten Gillibrand (D-N.Y.), and Chuck Schumer (D-N.Y.) introduced the [Supporting Students in Response to Coronavirus Act \(S. 3489\)](#), a bill that would provide more than a billion dollars in funding for a variety of programs supporting institutions and their students. The bill also provides additional flexibility for certain Title IV statutory requirements. Senator Patty Murray’s office released a [fact sheet](#) summarizing the bill. For higher education institutions, the bill would exempt students from paying back Pell Grants or repaying student loans that were taken out for a disrupted term by providing a waiver of Return to Title IV rules. Additionally, institutions would have flexibility in monitoring SAP to accommodate affected students.

Senate Republicans, through the Senate Health, Education, Labor, and Pensions (HELP) Committee, released the Coronavirus Aid, Relief, and Economic Security or the [CARES Act \(S. 3548\)](#). The Senate’s bill provides flexibility for institutions in Title IV program administration including provisions impacting R2T4 requirements, permitting foreign-based institutions to use distance education for American students, and excluding failing grades or dropped classes from loan eligibility and SAP calculations. The legislation also instructs the Secretary of Education to cancel student’s loan obligations for the current payment period if they withdraw as a result of the emergency. Senate

Majority Leader Mitch McConnell published a [summary of the CARES Act's benefits](#) on the Senate website.

The House introduced a nearly identical companion bill ([H.R. 6275](#)) to S.3489, although on March 23, 2020 the House Democrats released a new stimulus proposal entitled the “[Take Responsibility for Workers and Families Act \(H.R. 6379\)](#).” A [Fact Sheet](#) from the House Appropriations Committee provides a summary of the economic impact of H.R. 6379.

Many of these proposals are now a part of the stimulus plans being debated and voted on in Congress. As of the date of this writing (March 25, 2020), the House and Senate have each voted on separate stimulus packages that include provisions that would address issues relevant to students and institutions. The stimulus packages include language to provide student loan borrowers with relief from interest or repayment for the emergency period, need-based competitive grants for institutions, options for direct-to-student funding for emergency expenses, and amendments to Title IV's program requirements. Congressional leaders continue to negotiate the terms of a stimulus plan with an aim to pass a final bill in short order, although we cannot predict when and if Congress will resolve the current outstanding issues.

GI Bill Benefits Extended for Student Veterans

On March 16, 2020, Senator Jerry Moran (R-KS) [introduced S. 3503](#), a bill to authorize the Secretary of Veterans Affairs to allow veterans' GI Bill benefits to continue when previously authorized in-person education programs were converted to distance education because of an emergency, namely COVID-19. On March 21, 2020, President Trump signed the bill into law. The law gives the Department of Veterans Affairs (“VA”) temporary authority to continue GI Bill benefits, including monthly housing allowances and education benefits payments, until in-person classes resume after the pandemic.

Institutions Should Keep Accreditors Informed

As institutions transition online or make changes to their academic calendar, accreditors may require the filing of a notification or an application. Although many of these processes have been waived or relaxed, it is critical that institutions review the relevant accrediting agency guidance and communicate with their accreditor regarding institutional and programmatic changes made to address COVID-19, including changes to method of instruction or academic calendar. The Department's rules requiring institutions to notify and potentially seek approval from their institutional accreditor for such changes have been relaxed but not eliminated (please see our discussion of the 3/20 FAQs, above).

For up-to-date information from institutional accreditors, follow the links below:

- [Accrediting Bureau of Health Education Schools \(ABHES\)](#)

- [Accrediting Commission for Community and Junior Colleges Western Association of Schools and Colleges \(ACCJC WASC\)](#)
- [Accrediting Commission of Career Schools and Colleges \(ACCSC\)](#)
- [Accrediting Council for Continuing Education & Training \(ACCET\)](#)
- [Accrediting Council for Independent Colleges and Schools \(ACICS\)](#)
- [Council on Occupational Education \(COE\)](#)
- [Distance Education Accrediting Commission \(DEAC\)](#)
- [Higher Learning Commission \(HLC\)](#)
- [Middle States Commission on Higher Education \(MSCHE\)](#)
- [New England Commission of Higher Education \(NECHE\)](#)
- [Northwest Commission on Colleges and Universities \(NWCCU\)](#)
- [Southern Association of Colleges and Schools Commission on Colleges \(SACSCOC\)](#)
- [Western Association of Schools and Colleges Senior College and University Commission \(WSCUC\)](#)

Document and Communicate

With the rapidly changing landscape brought on by COVID-19, institutions should document all institutional decisions relating to student services, academic programs, and Title IV aid. Institutions should then consider their obligation to communicate these decisions to the appropriate federal, state, and local agencies. Failure to document and communicate steps taken to address COVID-19 may result in unexpected liabilities or regulatory action in the future.

We at Powers are diligently reviewing the announcements from the Department, Congress, accreditors, and industry groups. This article is provided as a summary of these announcements and is not intended to provide legal advice. For specific questions, please contact the Powers attorneys or professionals with whom you work (listed below):

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